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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 100, 103, 236, 245a, 274a and 299

[INS No. 2115–01; AG Order No. 2588–2002]

RIN 1115–AG06

Adjustment of Status Under Legal Immigration Family Equity (LIFE) Act Legalization Provisions and LIFE Act Amendments Family Unity Provisions

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: On June 1, 2001, the Attorney General published an interim rule in the **Federal Register** that implemented section 1104 of the Legal Immigration Family Equity Act (LIFE Act) and the LIFE Act Amendments by establishing procedures for certain class action participants to become lawful permanent residents of this country. Persons who may be eligible to adjust status under section 1104 of the LIFE Act and its Amendments are aliens who have filed for class membership with the Attorney General, before October 1, 2000, in one of three legalization lawsuits: (1) *Catholic Social Services, Inc.* v. *Meese,* vacated sub nom. *Reno* v. *Catholic Social Services, Inc.,* 509 U.S. 43 (1993) (*CSS*); (2) *League of United Latin American Citizens* v. *INS*, vacated sub nom. *Reno* v. *Catholic Social Services, Inc.,* 509 U.S. 43 (1993) *(LULAC)*; or (3) *Zambrano* v. *INS,* vacated, 509 U.S. 918 (1993) *(Zambrano).* The interim rule provided a 1-year application period from June 1, 2001, to May 31, 2002, for those aliens applying for adjustment of status pursuant to section 1104 of the LIFE Act. The interim rule also implemented section 1504 of the LIFE Act Amendments by providing for a stay of removal and work authorization for certain spouses and unmarried children of those aliens eligible to adjust status under section 1104 of the LIFE Act.

This rule provides final adoption of the interim rule, with certain amendments as appropriate. This final rule is necessary to ensure that those aliens eligible to apply for legalization benefits under the provisions of the LIFE Act and LIFE Act Amendments are able to do so within the application period. This final rule will provide definitive regulations for all applicants under section 1104 of the LIFE Act and section 1504 of the LIFE Act Amendments.

DATES: This final rule is effective June 4, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth N. Lee or Suzy Nguyen, Assistant Directors, Residence and Status Branch, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW, Room 3214, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION: On December 21, 2000, former President Clinton signed into law the LIFE Act, Title XI of H.R. 5548, enacted by reference in Public Law 106–553 (Dec. 21, 2000), and the LIFE Act Amendments, Title XV of H.R. 5666, enacted by reference in Public Law 106–554 (Dec. 21, 2000), which provide for numerous different immigration benefits. Section 1104 of the LIFE Act and its Amendments (LIFE Legalization) allow certain eligible aliens to apply for adjustment of status to that of a lawful permanent resident (LPR) under a modified version of section 245A of the Immigration and Nationality Act (Act) (8 U.S.C. 1255a). Aliens who are eligible to apply for adjustment under LIFE Legalization are those who, before October 1, 2000, had filed with the Attorney General a written claim for class membership in the *CSS, LULAC,* or *Zambrano* legalization class action lawsuits. In order to qualify for adjustment, aliens must establish that they entered the United States before January 1, 1982, and thereafter resided in continuous unlawful status through May 4, 1988. Aliens also must establish that they were continuously physically present in the United States from November 6, 1986, through May 4, 1988. Furthermore, aliens must demonstrate basic citizenship skills. Finally, aliens must be otherwise admissible to the United States under the Act. LIFE Legalization also provides for a stay of removal or deportation and work authorization for eligible aliens under this law while their adjustment applications are pending.

Section 1504 of the LIFE Act Amendments provides that the Attorney General may not remove certain spouses and children of aliens eligible to adjust under LIFE Legalization and shall grant employment authorization to those eligible spouses and children for the period of time in which they have been afforded Family Unity protection. Aliens who might benefit from the Family Unity provisions of the LIFE Act Amendments are those who:

(1) Are currently in the United States;

(2) Are the spouse or unmarried child of an alien who is eligible for adjustment under LIFE Legalization; and

(3) Entered the United States before December 1, 1988, and were residing in the United States on such date.

On June 1, 2001, the Attorney General published an interim rule in the **Federal Register** at 66 FR 29661. The Attorney General amended the Immigration and Naturalization Service (Service) regulations by adding Subparts B and C to 8 CFR part 245a. Subpart B implemented the LIFE Legalization provisions of the LIFE Act and Subpart C implemented the Family Unity provisions of the LIFE Act Amendments.

The interim rule invited interested persons to provide written comments on or before July 31, 2001. The Service received 132 comments during the comment period and has carefully considered all these comments in formulating this final rule. The following is a discussion of the comments and the Service's response.

Comments relating to LIFE Legalization

Fees (8 CFR 103.7)

Five commenters questioned the Service's imposition of a $330 filing fee for LIFE Legalization applications. Many of these commenters argued that the Service disregarded the legislative intent that LIFE Legalization applicants be treated in the same manner that they would have been treated had they filed applications for legalization during the

initial application period.[1] These commenters contended that any alien who is eligible to apply for LIFE Legalization would have been required to pay only a $185 filing fee during the Immigration Reform and Control Act of 1986 (IRCA) legalization application period (the filing fee for the Form I–687, Application to Adjust Status as a Temporary Resident-Applicants, under section 245A of the INA). The Service appreciates that many commenters have concerns regarding what they perceive to be a substantial increase in filing fees for legalization benefits. The Service must note, however, that in addition to the $185 filing fee for the Form I–687, IRCA legalization applicants were required to pay an additional $120 filing fee when applying for LPR status (the filing fee for the Form I–698, Application to Adjust Status From Temporary to Permanent Resident). As such, IRCA legalization applicants paid filing fees totaling $305, just $25 less than the fee imposed by the Service on LIFE Legalization applicants in the interim rule.

That being said, the Service has reconsidered the fee that will be imposed on LIFE Legalization applicants. As was discussed in the preamble to the interim rule (66 FR 29665, 29667–68), in developing fees, the Service must comply with guidance provided in the Office of Management and Budget (OMB) Circular A–25. The Service referred to a preliminary draft of its most recent fee review—the FY 2000 Immigration Examinations Fee Account Review—when determining the fee to be levied on LIFE Legalization applicants using the Form I–485, Application to Register Permanent Residence or Adjust Status. That review conducted an in-depth analysis of both direct and indirect costs using an activity-based costing methodology. The draft of the fee review identified the full cost of the Form I–485 to be $330. Since publication of the interim rule, the Service has re-evaluated the FY 2000 Immigration Examinations Fee Account Review and calculated the full cost of the Form I–485 to be $255 instead (*see* the Service's final rule published on December 21, 2001, at 66 FR 65811). Accordingly, the application fee for LIFE Legalization applicants is reduced to $255. Any individual who previously filed a LIFE Legalization application and paid the $330 filing fee will receive a refund in the amount of the difference ($75) from the Service. If an individual is due a refund, there is no reason or need for that individual to contact the Service; the refund will be generated without any action from the LIFE Legalization applicant.[2]

Some commenters argued that members of the *LULAC* class action lawsuit were previously required to pay the original $185 filing fee and they should be credited this amount when filing for LIFE Legalization. The Service does not agree. The LIFE Act provides for certain class action applicants to apply, under a new procedure, for adjustment of status pursuant to section 245A of the Act. Any prior Form I–687 that may have been filed by these class action applicants has no bearing on any Form I–485 that may be filed pursuant to LIFE Legalization. This is a new program with new filing requirements. As such, all aliens applying for LIFE Legalization are subject to the imposition of the full $255 filing fee.

Some commenters also criticized the Service's position that none of the fees collected from the filing of LIFE Legalization applications will be used in the enforcement of IRCA's anti-discrimination provisions. As was discussed in the supplementary information of the interim rule (66 FR 29662), section 245A(c)(7) of the Act provided for the allocation of up to $3 million of the application fees for section 245A of the Act to immigration-related unfair employment practices programs. Section 1104(c)(6) of the LIFE Act specifically prohibits the use of any funds collected through this program to be used in such a manner. Consequently, the Service is statutorily prohibited from using any LIFE Legalization application fees for the enforcement of immigration-related unfair employment practices.

Definitions (8 CFR 245a.10)

One commenter wanted the Service to amend the requirement that an applicant must establish he or she filed a written claim for class membership in *CSS, LULAC,* or *Zambrano.* Alternatively, this commenter argued that any applicants who had submitted a Form I–687 prior to the enactment of the LIFE Act should be considered by the Service to have already established prima facie eligibility, as well as continuous residence and physical presence requirements. In addition, the commenter argues that anyone who filed a Form I–687 prior to the enactment of the LIFE Act should not have to file a new application pursuant to the LIFE Act. The Service disagrees with these arguments. Sections 1104(b) and (c)(2) of the LIFE Act specifically require that LIFE Legalization applicants must have filed a written claim for class membership, and establish continuous unlawful residence and physical presence, basic citizenship skills, and admissibility as an immigrant. Furthermore, use of the Form I–687 has not been exclusively limited to the *CSS, LULAC,* and *Zambrano* lawsuits, and in some cases, the Form I–687 was not required to be completely filled out or signed by the applicant. Therefore, the fact that an individual may have filed a Form I–687 does not alone establish prima facie eligibility for LIFE Legalization. The Service will not amend the final regulations in response to this comment.

However, the Service has decided to establish a definition for ''written claim for class membership.'' During the past 14 years, the courts have provided sufficient periods of time for aliens alleging class membership to come forward and notify the Attorney General that they believe that they meet the class definitions. Various forms of evidence that would prove notice to the Attorney General are listed in 8 CFR 245a.14. The Service is adding to that list other forms of evidence which would have been issued pursuant to filing a claim for class membership. The Service is adding Form I–765, Application for Employment Authorization, submitted by an alien who filed for class membership, and an application for a stay of removal submitted by an alien who filed for class membership, and notes that the Service will also evaluate all relevant documents offered by the applicant to establish notice.

Aliens in Exclusion, Deportation, or Removal Proceedings (8 CFR 245a.12(b)(1))

Six commenters objected to the requirement of the concurrence of Service counsel before an immigration judge or the Board of Immigration Appeals may administratively close proceedings, arguing that no guidance is provided in the regulations as to when Service counsel will withhold such concurrence. Service counsel will withhold such concurrence if the alien is not prima facie eligible for legalization. Further guidance through the final regulations is not necessary. No

[1] On November 6, 1986, former President Reagan signed into law the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603. Section 201 of IRCA created a ''legalization'' program under section 245A of the Act that allowed for certain aliens to apply for adjustment to temporary resident status, and later to LPR status. The legalization program had a 1-year application period that began on May 5, 1987, and ended on May 4, 1988.

[2] The Service anticipates that all refunds will be delivered by September 3, 2002. If an individual has not received his or refund by September 3, 2002, he or she should contact Lorraine Juiffre at 802–872–6200 ext. 3035.

amendments to the final regulations will be made as a result of this comment.

These same commenters pointed out that an alien with a final order receives an automatic stay of removal by filing an application for LIFE Legalization, and as such argued that concurrence by Service counsel in order to administratively close the matter of an alien currently in proceedings is pointless because the Service could not remove such alien in any event. The Service points to the distinction between administrative proceedings to determine removability and the actual removal of an alien. Should the Service counsel find an alien in proceedings to be prima facie ineligible for LIFE Legalization benefits, such matter will not be administratively closed. If the alien were ultimately ordered removed, such order will be stayed pending the final outcome of the adjudication of that LIFE Legalization application (*see* 8 CFR 245a.13(f)). The final regulations will not be amended in response to these comments.

Filing From Abroad (8 CFR 245a.12(c))

One commenter stated that the Service regulations governing application for LIFE Legalization from abroad is not specific enough with regards to procedures such as fingerprinting, interviewing, and parole into the United States. As indicated in the interim regulations, the Service will provide the applicant who applies for LIFE Legalization from abroad with specific instructions after his or her application has been reviewed. The Service is coordinating efforts with other Federal agencies and American consulates abroad in order to accommodate applicants who file from abroad. Since there are many scenarios for an applicant from abroad (*e.g.,* he or she may reside in an area with an overseas Service office, or in an area with only an American consulate, or in an area remote from either, *etc.*), the Service will provide each applicant with specific procedures that would best accommodate his or her situation and location. Further, any additional procedural guidelines regarding applications from abroad may be set via Service policy memos. As such, the final regulations will not be amended as a result of this comment.

Proof of Citizenship Skills (8 CFR 245a.12(d)(10))

Five commenters suggested that the Service clarify that a LIFE Legalization applicant may submit proof that he or she is satisfactorily pursuing a course of study to achieve basic citizenship skills at any time during the application process. The commenters stated that the Form I–485 Supplement D, LIFE Legalization Supplement to Form I–485 Instructions, advised applicants that such evidence could be submitted at the time of application, subsequent to filing the application but before the Service interview, or at the time of Service interview. The Service has considered this comment and has made appropriate adjustments to the language at 8 CFR 245a.12(d)(10) to accommodate this suggestion.

Secondary Evidence (8 CFR 245a.12(g))

Four commenters questioned the necessity of 8 CFR 245a.12(g). These commenters contended that the section in the interim regulations that described secondary evidence and the Service's acceptance of such evidence is redundant and unnecessary. Upon further review of this section of the interim regulations, the Service finds that much of the language contained in 8 CFR 245a.12(g) is indeed unnecessary, especially when much of that language is contained in 8 CFR 103.2(b)(2). As such, the Service has adopted these commenters' suggestions and has amended the language at 8 CFR 245a.12(f) and (g).

Employment Authorization (8 CFR 245a.13(d)(2))

Five commenters requested that the Service include a timeframe within which a Form I–765, Application for Employment Authorization, must be adjudicated. The Service does not believe that any regulatory language needs to be included in the final rule to address this issue. Employment authorization shall be granted to certain LIFE Legalization applicants pursuant to 8 CFR 274a.12(c)(24). The regulations at 8 CFR 274a.13(d) provide that a Form I–765 filed pursuant to 8 CFR 274a.12(c) (with certain specific exceptions) be adjudicated within 90 days of receipt. These same regulations provide for the issuance of interim employment authorization if a Form I–765 is not adjudicated within those 90 days. In other words, if a LIFE Legalization applicant applies for, and is eligible for, employment authorization, and does not receive such employment authorization within 90 days of filing, he or she may request interim employment authorization at the Service district office having jurisdiction over his or her place of residence. In light of these existing regulations, the Service will not amend the regulations at 8 CFR 245a.13(d)(2).

Travel Authorization (8 CFR 245a.13(e))

Four commenters expressed concern for the language at 8 CFR 245a.13(e) relating to the issuance of advance parole. Specifically, these commenters were troubled that the interim rule at 8 CFR 245a.13(e) indicated that the Service shall issue advance parole ''pursuant to the standards prescribed in section 212(d)(5) of the Act.'' Section 212(d)(5) of the Act states, in pertinent part, that the ''Attorney General may * * * parole [aliens] into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' A review of this reference, especially in light of the language at 8 CFR 245a.13(e)(1) (which indicates that the Service shall approve applications for advance parole filed by any alien eligible for LIFE Legalization), does appear to be too stringent. Accordingly, the Service has amended the regulations in response to these commenters' concerns.

One commenter questioned the Service's requirement that all requests for advance parole be submitted to the lockbox address in Chicago and adjudicated at the Missouri Service Center. The commenter indicated that this filing requirement could pose a problem for those LIFE Legalization applicants who have to travel abroad due to emergent circumstances. The Service appreciates this commenter's concern. Therefore, if a LIFE Legalization applicant must travel abroad due to reasons described in section 212(d)(5) of the Act, he or she will be allowed to file the Form I–131, Application for Travel Document, with the District Director having jurisdiction over his or her place of residence. Such an alien *must* demonstrate to the District Director that he or she is an eligible alien who has filed for adjustment of status pursuant to LIFE Legalization *and* that he or she must travel abroad due to urgent humanitarian reasons. All other Forms I–131 filed by LIFE Legalization applicants must be filed with the Director of the Missouri Service Center. The regulations have been amended accordingly.

Four commenters argued that the interim rule placed an unauthorized evidentiary burden of proof on LIFE Legalization applicants who travel abroad without advance parole. Nothing in the interim rule affects the Service's adjudication of a LIFE Legalization application due to an applicant's travel abroad while the LIFE Legalization application is pending. Section

1104(c)(3)(B) of the LIFE Act states that ''the Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness of a close relative or other family need.'' As the Act directed the Attorney General to issue regulations on the topic, 8 CFR 245a.13(e) was issued. Pursuant to 8 CFR 245a.13(e), an alien who travels abroad will be afforded the opportunity to establish the requirements of section 1104(c)(3)(B) of the LIFE Act to the Service or to an immigration judge.

In addition, the regulation at 8 CFR 245a.13(e)(1) permits each LIFE Legalization applicant to apply for advance parole. Through 8 CFR 245a.13(e)(2) and (3), applicants are encouraged to do so, in two different ways. Under 8 CFR 245a.13(e)(2), an alien who goes abroad and returns under a grant of advance parole is presumed to be entitled to return under section 1104(c)(3)(B) of the LIFE Act unless the Service, having placed the alien in an expedited removal or section 240 of the Act proceeding, proves by a preponderance of the evidence that the alien is not eligible for adjustment pursuant to LIFE Legalization. If the alien goes abroad without obtaining advance parole, however, 8 CFR 245a.13(e)(3) provides that the alien must be denied admission and may be removed, unless the alien establishes ''clearly and beyond doubt'' that he or she filed a timely LIFE Legalization application showing prima facie eligibility, *and* the alien's absence meets the requirements of section 1104(c)(3)(B) of the LIFE Act.

These commenters object to the ''clearly and beyond doubt'' standard of proof for 8 CFR 245a.13(e)(3), believing that this standard is impermissibly burdensome on aliens. Section 235(b)(2) of the Act clearly states that the Service must deny admission to an applicant for admission, unless the alien is ''clearly and beyond doubt'' entitled to admission. The same standard of proof applies in section 240 of the Act proceedings against an applicant for admission (section 240(c)(2)(A) of the Act). Moreover, the Service, under 8 CFR 245a.13(e)(1), must grant advance parole to any advance parole applicant who makes a prima facie showing of LIFE Legalization eligibility.

Establishing Class Membership Application (8 CFR 245a.14)

Some commenters stated that the Service should not require LIFE Legalization applicants to submit evidence that they applied for class membership. These commenters contended that the Service should have all of the necessary evidence in its databases and administrative files, and that requiring LIFE Legalization applicants to file this evidence is an unfair burden. The Service does believe that aliens who filed a written claim for class membership in *CSS, LULAC,* or *Zambrano* prior to October 1, 2000, will appear in the Service's databases as so registered. If for some reason, however, an applicant who did timely file for class membership does not appear in Service databases, then any documentary evidence of such filing provided by the applicant will be reviewed by the Service. If this documentary evidence is provided with the application, the Service will not need to request such evidence from the applicant, thereby expediting the application process. If the applicant does not have this documentary evidence in his or her possession, but believes that the Service has this evidence in the applicant's administrative file, the interim regulations at 8 CFR 245a.12(g) provide that applicants could submit a statement to that effect in lieu of the actual documentation. This language has been moved to 8 CFR 245a.12(f) in the final regulations. The Service is not amending the language in the final rule in response to these comments.

Two commenters requested that the Service accept affidavits, letters, and documents from community agencies as evidence of class membership application. It is noted that the interim regulations at 8 CFR 245a.14(e) (8 CFR 245a.14(g) in the final regulations) permit LIFE Legalization applicants to submit ''[a]ny other relevant document(s)'' in proving class membership application along with those listed under 8 CFR 245a.14(a) through (d) (8 CFR 245a.14(a) through (f) in the final regulations). This regulatory language does not limit the type of documentation that may be submitted to prove class member application. The Service believes the inclusion of this phrase (other relevant documents) creates a practical, as well as an expansive, definition that encompasses all types of evidence, including those discussed by the commenters. As the Service's interim rule does allow for the submission of the above-mentioned documents, the Service will not amend the regulations in response to these comments.

In addition, the Service clarifies that, where an alien filed a written claim for class membership, he or she is deemed to have also filed a claim for class membership on behalf of a spouse or child who was a spouse or child as of the date the alien (who filed a written claim for class membership) alleges that he or she attempted to file or was discouraged from filing an application for legalization during the original application period. Thus, the definition of ''eligible alien'' is amended to include a spouse or child who was a spouse or child as of the date the alien (who filed a written claim for class membership) alleges that he or she attempted to file or was discouraged from filing an application for legalization during the original application period. This in no way implies that such spouses and children will derive adjustment of status based on the LIFE Legalization application of the alien who filed a written claim for class membership. Rather, the spouse or child of the alien who filed the claim for class membership will also be considered to be an ''eligible alien'' who may file a separate application for LIFE Legalization that will be adjudicated based on the merits of such alien's documentation.

Continuous Residence (8 CFR 245a.15)

Many commenters expressed concern over the Service's requirement that LIFE Legalization applicants produce evidence of their continuous residence in an unlawful manner prior to January 1, 1982, through May 4, 1988. Several commenters cited the great length of time that has passed since 1982, while others cited LIFE Legalization applicants' unlawful status and fear of discovery, as possible reasons for not having evidence of their residence during this time period. The Service recognizes that LIFE Legalization applicants will be required to produce documents dated nearly 20 years ago. Because section 1104(c)(2)(B) of the LIFE Act imposes this continuous residence requirement, however, the Service will continue to require LIFE Legalization applicants to document their residence in the United States during the requisite time period.

One commenter suggested that an alien's departure between January 1, 1982, and May 4, 1988, under an order of deportation should not interrupt the alien's continuous residence. The statute clearly provides that departure while a deportation order is in effect ends ''continuous residence''; section 245A(g)(2)(B)(i) of the Act states that

''an alien shall not be considered to have resided continuously in the United States if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation.'' No provision of the LIFE Act revoked this section of the Act. As such, the Service will not amend the final regulations in response to this comment.

One commenter requested clarification of the language at 8 CFR 245a.15(d). This commenter questioned the use of the word ''eligible'' in the following sentence: ''The following categories of aliens, who are otherwise eligible to adjust to LPR status pursuant to LIFE Legalization, may file for adjustment of status provided they resided continuously in the United States in an unlawful status since prior to January 1, 1982, through May 4, 1988.'' The Service has reviewed this sentence and is confident of its wording. The paragraphs following the sentence quoted above list those categories of nonimmigrants who might be able to establish unlawful residence in the United States. If an alien falls into one of these categories of nonimmigrants, and meets the other eligibility requirements of LIFE Legalization (*i.e.,* he or she applied for class membership in one of the three class action lawsuits prior to October 1, 2000, he or she is admissible as an immigrant, he or she has not been convicted of a felony or of three or more misdemeanors, *etc.*), then he or she may file for adjustment of status pursuant to LIFE Legalization. The Service will not amend the final regulations in response to this comment.

Continuous Physical Presence (8 CFR 245a.16)

Six commenters argued that the standards set out in 8 CFR 245a.16(b) regarding brief, casual, and innocent absences in relation to the continuous physical presence requirement did not allow for case-by-case adjudication. It was never the intent in the interim rule to set out a categorical definition of brief, casual, and innocent absences. The numerical standards were placed in the interim rule to serve as a guide to adjudicators. If the number of days the applicant was absent from the United States fell below the guidelines, the adjudicator need look no further. If the applicant's trip was greater than 30 days or an aggregate of 90 days, the applicant could provide reasons for why his or her return could not be accomplished within the time period(s) allowed. As such, a case-by-case adjudication is necessitated by the interim rule. Given the misinterpretation by these commenters, however, the Service will amend 8 CFR 245a.16(b) to remove the standards. Applicants should now be prepared to offer evidence establishing that absences of any period of time were brief, casual, and innocent.

One commenter stated that the regulations at 8 CFR 245a.16(a) would prevent the submission of Social Security Administration (SSA) or Internal Revenue Service (IRS) printouts as evidence of continuous physical presence. The regulations read, in pertinent part, that evidence ''may consist of any documentation issued by any governmental or nongovernmental authority, provided such evidence bears the name of the applicant, was dated at the time it was issued, and bears the signature, seal, or other authenticating instrument of the authorized representative of the issuing authority.'' The Service does not believe this language would prevent the submission of SSA or IRS printouts, provided these printouts bear the name of the applicant, are dated at the time they are issued (*i.e.,* when they are printed out by the issuing agency), and are appropriately endorsed by the issuing agency. The Service will not amend the regulations in response to these comments.

Grounds of Inadmissibility (8 CFR 245a.18)

Many commenters were concerned about individuals who have contracted a communicable disease of public health significance. LIFE Legalization applicants, like all other applicants for admission to the United States, must be able to establish their admissibility pursuant to section 212(a) of the Act. If a LIFE Legalization applicant is found inadmissible based on any of the health-related grounds described at section 212(a)(1) of the Act, he or she may file for a waiver of these grounds of inadmissibility. The interim rule does not prohibit this. Consequently, the Service will not amend the regulations based on these comments.

Six commenters stated that the interim rule did not take into account the fact that many LIFE Legalization applicants have not been entitled to employment authorization and therefore may not be able to demonstrate consistent employment history. In this context, the application of the phrase ''history of employment'' is statutory and is found in the Special Rule for Determination of Public Charge at section 245A(d)(2)(B)(iii) of the Act. The statutory Special Rule is found in IRCA and is incorporated by reference in the LIFE Act. The Service believes that the statutory Special Rule is meant to assist a legalization applicant to prevent a finding of being inadmissible on public charge grounds.

One commenter argues that IRCA and the LIFE Act require that an applicant demonstrate that he or she is not likely to become a public charge; that the LIFE Act interim rule provides that an alien with a consistent employment history is not inadmissible; and that, if the adjudication took place during the original application period (May 5, 1987, to May 4, 1988), the determination of whether a given class member was likely to become a public charge would have taken place when there ''was no legal bar to class members working in the United States, *see* 8 U.S.C. 1324a.'' This commenter fails to note that the ''employment history'' is derived from the statutory Special Rule, and that *employer* sanctions provisions were enacted in IRCA on November 6, 1986. Again, both IRCA and the LIFE Act require that an alien prove that he or she is not likely to become a public charge, clearly a prospective analysis. Both statutes contain the same ''Special Rule'' to be applied in the public charge analysis and both use the standard of demonstrating ''employment history'' to overcome a finding that one is likely to become a public charge.

Nevertheless, the Service has decided to amend 8 CFR 245a.18. The Service is adding language to the regulations regarding the adjudication of public charge for a LIFE Legalization applicant. In adjudicating the issue of public charge, the Service will automatically apply the Special Rule. Adjudicating whether one is likely to become a public charge is necessarily a prospective analysis. The Special Rule provides for a retrospective analysis in determining the prospect of becoming a public charge. Accordingly, the Service will take into account an alien's employment history in the United States, to include the period prior to the 1986 advent of employer sanctions. Additional language in the regulation will encourage applicants to submit as much information as possible in order to preclude a public charge finding. The analysis will be on a case-by-case basis and will permit the applicant to prove financial responsibility pursuant to any number of ways, to include pointing to the ability to have a sponsor file a Form I–134, Affidavit of Support, on the applicant's behalf. Anyone can be the sponsor for the Form I–134.

Interviews (8 CFR 245a.19)

Four commenters stated that the interim rule regarding the interviewing of LIFE Legalization applicants implied that they would not be interviewed by

an immigration officer in their jurisdiction. The Service did not intend to convey this message through the interim rule. The interim rule at 8 CFR 245a.19(a) stated that ''[a]pplicants will be interviewed by an immigration officer as determined by the Director of the Missouri Service Center.'' All LIFE Legalization applicants who applied for adjustment of status from within the United States, and who must appear for a Service interview, will be interviewed by a Service officer at the Service office with jurisdiction over their place of residence. Those LIFE Legalization applicants who applied for adjustment of status from abroad, and who must appear for a Service interview, will be interviewed by a Service officer as determined by the Director of the Missouri Service Center. The Service does not, therefore, believe that the final regulations must be amended in response to these comments.

One commenter requested that the Service not require interviews of LIFE Legalization applicants. This commenter argued that many LIFE Legalization applicants had already been interviewed when they applied for class membership in one of the three class action lawsuits. While some applicants may not be required to establish basic citizenship skills because they meet one of the listed exceptions, or they have met the requirements in some other fashion (obtained a GED or are enrolled in an acceptable learning program), there will be many LIFE Legalization applicants who will be required to pass a basic citizenship test at the time of his or her Service interview. Further, in-person interviews are useful to both the Service officer and the applicant. It provides an opportunity for any inconsistencies or gaps in the application to be resolved in a timely manner without having to resort to correspondence through the mail. Moreover, there will be instances where an in-person interview will be necessary because shortcomings or discrepancies in an applicant's file cannot be resolved through correspondence (*e.g.,* an applicant does not have sufficient documentation to establish continuous physical presence, but is able to convince a Service officer at an in-person interview that he or she was physically present in the United States). Accordingly, the regulations will not be amended.

Decisions and Appeals (8 CFR 245a.20)

Four commenters requested that the Service's final rule provide for the issuance of a notice of intent to deny prior to the denial of any LIFE Legalization application. The interim rule at 8 CFR 245a.20(a)(2) does provide for the notification of a LIFE Legalization applicant if the Service intends to deny his or her application based upon information of which the applicant was not aware. The Service does recognize that applicants who filed for legalization under IRCA did receive a ''Notice of Intent to Deny'' prior to the issuance of a denial that clearly notified the applicant of the Service's intent to deny his or her application. While the Service has been and will be following this same procedure for LIFE Legalization applicants, it recognizes that this intention is not clearly delineated in the regulations as presently drafted. As such, the Service has made an amendment to the language at 8 CFR 245a.20(a)(2) in response to these commenters' concerns.

These same commenters also requested that the Service expressly state that all LIFE Legalization applicants whose applications are denied may appeal their decisions to the Administrative Appeals Office. The interim rule at 8 CFR 245a.20(a)(2) clearly states that ''a party affected under this part by an adverse decision is entitled to file an appeal . . . to the Administrative Appeals Unit.'' The Service believes that the interim rule is quite clear that all decisions of denial issued pursuant to LIFE Legalization may be appealed. As such, the Service makes no changes pursuant to these comments.

Producing Supporting Documentary Evidence

Many commenters stated that they had already submitted all required evidence in support of their claims to eligibility for legalization. Commenters also expressed concern over what could be a lengthy processing time for any Freedom of Information Act (FOIA) requests to obtain these documents, and then presumably submit them in support of their LIFE Legalization applications. The Service acknowledges that there is a designated time period in which to apply for LIFE Legalization and, therefore, all FOIA requests for records of LIFE Legalization applicants will be expeditiously handled. The Service wishes to reiterate that the interim rule at 8 CFR 245a.12(g) advised applicants that, in lieu of the actual documentation, they could submit a statement indicating that supporting documentation is already contained in the Service's records. This language will be moved to 8 CFR 245a.12(f) in the final rule. Also, the Service will be reviewing all previously created administrative files associated with LIFE Legalization applicants.

Regulatory Changes Deemed Necessary by the Service

The interim rule at 8 CFR 245a.12(d)(2) instructed LIFE Legalization applicants to submit a $25 fingerprinting fee if they are between the ages of 14 and 75. Currently, all other applicants for adjustment of status must be fingerprinted if they are between the ages of 14 and 79, inclusive. Upon further consideration, the Service will require all LIFE Legalization applicants between the ages of 14 and 79 to be fingerprinted. This change will bring the fingerprinting requirements for LIFE Legalization applicants into alignment with the fingerprinting requirements for all other applicants for adjustment of status. LIFE Legalization applicants should be aware that the December 21, 2001, final rule at 66 FR 65811 raised the fingerprint fee from $25 to $50. LIFE Legalization applicants are subject to this higher fee.

The interim rule at 8 CFR 245a.17(c) provided exceptions for certain LIFE Legalization applicants to the establishment of basic citizenship skills. This final rule will clarify that the age exception (being 65 years of age or older) must be met at the time the application for adjustment of status is filed. Section 1104(c)(2)(E)(i)(I) of the LIFE Act requires that LIFE Legalization applicants meet the requirements of section 312(a) of the Act. Sections 312(b) and (c) of the Act provide for exceptions to the naturalization citizenship skills if certain criteria are met as of the date of filing. The implementing regulations at 8 CFR 312.1(b) and 312.2(b) also indicate that a person must meet the age requirement in order to meet these exceptions as of the date of filing. Accordingly, the Service will require that any exceptions to the basic citizenship skills requirements based on age must be met at the time of filing.

Section 1104(c)(2)(D)(i) of the LIFE Act provides that an alien must establish that he or she is admissible to the United States as an immigrant except as otherwise provided under section 245A(d)(2) of the Act. Section 245A(d)(2) of the Act references waivers of grounds of exclusion. In particular, section 245A(d)(2)(B)(ii)(II) of the Act references in what capacity section 212(a)(2)(C) of the Act may not be waived. The Service sees a conflict between section 245A(d)(2)(B)(ii)(II) of the Act and section 212(a)(2)(C) of the Act. When originally enacted, IRCA contained a similar admissibility provision at section 245A(d)(2) of the Act barring the waiver of certain

grounds in the then-existing section 212 of the Act. However, section 245A(d)(2) of the Act was amended by section 603(a)(13)(D) of the Immigration Act of 1990 (IMMACT 90) (Public Law 101–649) to comport with the related changes to section 212 of the Act. Specifically, section 245A(d)(2)(B)(ii)(II) of the Act was amended by IMMACT 90 to remove the reference to pre-IMMACT 90 section 212(a)(23) of the Act (relating to a controlled substance and trafficking in controlled substance), insert a reference to section 212(a)(2)(C) of the Act, but retain the exception (so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana). What would correlate to the pre-IMMACT 90 section 212(a)(23)(A) of the Act is now listed at section 212(a)(2)(A)(ii) of the Act and would thus be referenced at section 245A(d)(2)(B)(ii)(I) of the Act. By its express terms, the exception pertains to ''simple possession'' and as such the Service makes the interpretation that the exception must be applied to the grounds listed at section 212(a)(2)(A)(ii) of the Act and amends the regulations accordingly.

The application period is established by section 1104(c)(2)(A) of the LIFE Act as ''the 12-month period beginning on the date on which the Attorney General issues final regulations to implement this section.'' Given the number of clarifications provided in this final rule and in keeping with congressional intent to permit eligible aliens an opportunity to apply and to end the litigation, the Service has decided to end the application period 1 year from publication of this final rule in the **Federal Register**. As such, the application period commenced with the publication of the interim rule, June 1, 2001, and will end on June 4, 2003.

Congressional Intent To End Litigation

In enacting the provisions for LIFE Legalization, Congress sought to bring an end to the litigation and to permit eligible class members to apply for legalization under section 245A of the Act. Senators Kennedy and Abraham stated that ''the LIFE Act * * * directs the Immigration and Naturalization Service (INS) to adjudicate the applications of individuals in * * * lawsuits on the merits, rather than continuing to litigate whether they were timely filed.'' 146 Cong. Rec. S11, 850–02, Exhibit 2 (daily ed. Dec. 15, 2000) (Joint Memorandum Concerning the Legal Immigration Family Equity Act of 2000 and The LIFE Act Amendments of 2000). Moreover, the Government has represented to Federal courts its willingness to accept applications of any alien who alleges he or she was ''front-desked.''[3] The Service had set up a Front-Desking Legalization Questionnaire Program so as to permit any alien who established that he or she was ''front-desked'' to apply for legalization. Prior to the expiration of the Front-Desking Legalization Questionnaire Program, Congress enacted the LIFE Act establishing a new application period for the three identified class actions (*CSS, LULAC,* and *Zambrano*). In *Reno* v. *Catholic Social Services,* 509 U.S. 43, 67 n.28 (1993), the Supreme Court left open the possibility that an alien who was not ''front-desked'' could show that the ''front-desking policy'' was a ''substantial cause'' of their failure to apply. In the LIFE Act, Congress provides benefits for, and identifies to the Attorney General, three lawsuits that include claims not only of aliens who allege that they were ''front-desked'' but also of aliens who claim that they were discouraged.

The difference in requirements between IRCA and LIFE 245A provisions regarding the continuous unlawful residence requirement could produce results inconsistent with the above goal. In the abstract, a class member may not be able to meet the LIFE Act requirement but may be able to meet the IRCA requirement. Under IRCA, applicants must establish that they resided continuously in the United States in an unlawful status from before January 1, 1982, to the date they applied for legalization (section 245A(a)(2)(A)). The Supreme Court indicated that class members ''applied'' for legalization at the time they were ''front-desked.'' *See Reno, Id.* Under the LIFE Act, however, aliens must establish that they resided continuously in the United States in an unlawful status before January 1, 1982, to May 4, 1988 (section 1104(c)(2)(B) of the LIFE Act).

Similarly, the continuous physical presence requirement is different in the two statutes. Specifically, IRCA required applicants to prove continuous physical presence in the United States since November 6, 1986 (section 245A(a)(3)(A) of the Act). Service regulations allowed that the applicant's obligation to prove continuous physical presence from November 6, 1986, ran only to the date of application (8 CFR 245a.2(b)(1)). The LIFE Act, however, requires all applicants to prove continuous physical presence from November 6, 1986, to May 4, 1988. Thus, the LIFE Act's legalization provisions do not aid class members who allege they interrupted their continuous physical presence after being ''front-desked'' or discouraged.

The Joint Memorandum states that ''nothing in this legislation is intended to preclude this option, or to preclude the Attorney General from resolving any other IRCA adjustment applications on the merits.'' Thus, to facilitate congressional intent, and in accordance with the Supreme Court decision and the Government's commitment, the Service has decided to add to the final rule a provision whereby the Service will adjudicate a LIFE Act application as an application under the standards of section 245A of the Act (that is, under the pre-LIFE Act standards) if the applicant is eligible for such relief under section 245A of the Act but not under section 1104 of the LIFE Act.

For example, if an alien fails to meet the continuous unlawful residence requirement pursuant to section 1104(c)(2)(B) of the LIFE Act, the Service will apply the continuous unlawful residence requirement using section 245A(a)(2)(A) of the Act and deem the ''date the application is filed'' to be the date the applicant establishes that he or she was ''front-desked'' or discouraged from filing. If the alien then meets the continuous unlawful resident requirement at section 245A(a)(2)(A) of the Act, and all other legalization requirements under section 245A of the Act, such an alien shall be granted temporary resident status pursuant to IRCA. Such an alien would then be required to follow all requirements set forth in 8 CFR 245a, Subpart A, such as filing a Form I–698, Application to Adjust Status from Temporary to Permanent Resident, in order to adjust his or her resident status from temporary to permanent.

Comments Relating to LIFE Act Amendments Family Unity Provisions

Aging Out (8 CFR 245a.31)

The majority of commenters requested that the Service reconsider its position on children of LIFE Legalization applicants who reach the age of 21. As was discussed in the interim rule, section 1504(b) of the LIFE Act Amendments describes an eligible child as an alien who ''is'' the unmarried child of an alien described in section 1104(b) of the LIFE Act. The statutory language of the Family Unity provisions of the LIFE Act Amendments do not permit Family Unity protection to be extended to aliens who were children

[3] There are certain aliens who claimed that they attempted to physically tender an application for legalization with a fee during the 1-year IRCA application period, at a Service office, but had that application rejected by the Service for filing. This is commonly referred to as having had an application ''front-desked.''

on December 21, 2000, but who ''age-out'' of the Act's definition of child by virtue of reaching their 21st birthday before their Family Unity applications are adjudicated. Given the need to implement an interpretation of the statute that is consistent as it applies to both spouses and children, and in view of the interpretation of other provisions of the immigration laws relating to a child who ''ages-out'' upon reaching the age of 21, the Service interprets section 1504(b) of the LIFE Act Amendments to require the requisite familial status (the spousal or parent-child relationship) both at the time when the application for Family Unity benefits is adjudicated and thereafter. If the familial status does not exist at the time of adjudication, the alien will not be eligible for Family Unity benefits. If the status as a spouse or child exists at the time of adjudication, but ceases to exist thereafter, the alien will no longer be eligible for Family Unity benefits. Similarly, an alien who ceases to be an unmarried child because of the alien's marriage is no longer eligible. Given the statutory constraints imposed by the LIFE Act Amendments, the Service is unable to adopt these commenters' suggestion to ''freeze'' the age of a child as of the date of enactment of the LIFE Act Amendments (December 21, 2000).

One commenter argued that it would be proper for the Service to continue to grant LIFE Act Amendments Family Unity protection to unmarried adult sons and daughters of LIFE Legalization beneficiaries while denying similar protection to divorced spouses and married children of such beneficiaries. The commenter reasoned that, unlike divorced spouses and married children who have no means of receiving an immigrant visa or adjusting to LPR status through an alien who has adjusted to LPR status pursuant to LIFE Legalization, the unmarried son or daughter of such a LPR may be granted immigrant status based on that relationship. The Service appreciates this comparison; however, section 1504(b) of the LIFE Act Amendments specifically limits protection to ''an alien who is the spouse or unmarried child of an alien described in section 1104(b) of the [LIFE] Act.'' Had Congress intended to shield unmarried sons and daughters from aging out of LIFE Act Amendments Family Unity protection, it could have drafted section 1504 more in line with section 301 of the Immigration Act of 1990 (IMMACT 90), the provision that authorized the pre-existing Family Unity Program (FUP). Section 301 establishes a link between eligibility for immigrant status and continued eligibility for Family Unity protection by providing that the requisite family relationship had to have been established by a specific date and that the alien otherwise be a ''qualified immigrant'', which the Service has interpreted to mean continuously eligible for immigrant status based upon his or her relationship to a legalized alien. See, 8 CFR 236.12(a)(2). In the absence of similar language, the Service must treat LIFE Act Amendments Family Unity applicants consistently within the existing statutory definitions of child and spouse and therefore cannot adopt this commenter's suggestion.

Other commenters requested that the Service allow for Family Unity benefits to continue to be granted to spouses of LIFE Legalization applicants even if the marriage ends in divorce. Again, section 1504(b) of the LIFE Act Amendments specifically states that an eligible spouse or child ''is the spouse or unmarried child of an alien described in section 1104(b) of the [LIFE] Act.'' The Service is, therefore, unable to grant Family Unity benefits to former spouses of LIFE Legalization applicants.

Some commenters argued that once the principal alien has adjusted to LPR status under section 1104 of the LIFE Act, his or her family members may qualify for the same benefits as those aliens who benefit from the FUP established by section 301 of IMMACT 90. Section 301 of IMMACT 90 provides Family Unity benefits to the spouses and children of legalized aliens. Section 301(b)(2)(B) of IMMACT 90 defined legalized aliens as aliens who adjusted to temporary or permanent resident status pursuant to section 245A of the Act. The FUP applicants were required to establish entry into the United States before May 5, 1988, residence on that date, continuous residence in the United States since that date, and that a qualifying relationship with the legalized alien existed as of May 5, 1988 (8 CFR 236.12). Thus, the old FUP focused on unifying families that were in existence as of May 5, 1988. Beneficiaries of FUP protection do not automatically ''age-out'' upon turning 21, assuming that they are still eligible for family sponsored immigration status based upon his or her relationship to the legalized alien. These commenters argued that LIFE Legalization applicants may ultimately adjust to LPR status pursuant to section 245A of the Act, and, accordingly, their family members should be entitled to the benefits of the FUP under section 301 of IMMACT 90.

Section 301 of IMMACT 90 provides Family Unity benefits to the relatives of aliens who adjust status under the terms of section 245A of the Act as established by IRCA. Section 1504 of the LIFE Act Amendments provides Family Unity benefits to the relatives of aliens who adjust status under the terms of section 245A of the Act *as modified* by section 1104 of the LIFE Act. Section 1504(b) of the LIFE Act Amendments defines those relatives eligible for Family Unity benefits as the ''spouse or unmarried child of an alien described in section 1104(b) of the [LIFE] Act.'' Section 1504(c) of the LIFE Act Amendments provides for the parole of eligible relatives into the United States if the principal alien ''has obtained lawful permanent resident status under section 1104 of the [LIFE] Act.'' It is clear that Congress established a family unity program for the relatives of the LIFE Legalization beneficiaries that is separate and apart from the FUP established for the relatives of IRCA Legalization beneficiaries.

However, it must be noted that, given the decision to permit the conversion of a LIFE Legalization application to an application for IRCA legalization where such standards are more favorable to the applicant, it follows that if the principal alien's LIFE Legalization application is treated as an application under IRCA, then his or her family members, if eligible, may apply for Family Unity benefits under section 301 of IMMACT 90.

Filing and Decisions (8 CFR 245a.33)

Four commenters noted that the interim rule failed to implement section 1504(c) of the LIFE Act Amendments allowing for the application for Family Unity benefits from outside the United States. The Service is drafting a proposed rule on the LIFE Act Amendments Family Unity provisions that will cover these areas of concern and, accordingly, they will not be addressed in this rulemaking.

One commenter requested that the Service allow for the appeal of denials of applications for Family Unity benefits. This commenter stated that allowing applicants to reapply for Family Unity benefits subsequent to a denial for Family Unity benefits is not sufficient and that there must be an allowance for higher-level review of denied applications. First, there is no statutory instruction to create such a procedure within the Family Unity provisions of the LIFE Act Amendments. Second, 8 CFR 245a.33(c) provides an automatic 90-day delay between the denial of an alien's Form I–817 and the referral of the decision for enforcement action. This delay is designed to create an opportunity for renewed consideration of the alien's

claim to benefits under a process that will likely prove faster than the appeal procedure would have been. The Service has, therefore, concluded that the benefits of the more streamlined re-application process outweigh those of the proposed administrative appeal procedure and has not adopted this suggestion.

This same commenter further requested that the Service provide Family Unity applicants the same confidentiality provisions afforded applicants for LIFE Legalization. This commenter expressed concern that applicants seeking Family Unity benefits may subject themselves to removal proceedings should their Forms I–817 be denied. Again, while section 1104 of the LIFE Act does provide specific confidentiality provisions with regards to legalization applicants, section 1504 of the LIFE Act Amendments provides no such confidentiality provisions. Consequently, no amendments to the final rule will be made as a result of this comment.

Duration of Family Unity Benefits (8 CFR 245a.34)

One commenter requested that the Service clarify the length of time Family Unity benefits will be granted to eligible family members. This commenter stated that while it appeared Family Unity benefits would be granted in increments of 1 year, this was not explicit in the interim rule. This commenter also stated that Family Unity benefits should be granted in increments of 2 years, to mirror the existing FUP (whose beneficiaries receive 2-year periods of protection). Applicants for LIFE Legalization receive employment authorization valid for 1-year periods. The Service believes that any family members who derive Family Unity benefits based on the principal alien's application for LIFE Legalization should not receive employment authorization for longer periods than the principal alien. Therefore, the interim rule provided that any Family Unity beneficiary who received Family Unity benefits based on the principal alien's pending application for LIFE Legalization would receive Family Unity benefits only in increments of 1 year. Upon further consideration, however, the Service has decided to grant Family Unity benefits in increments of 2 years once the principal alien has adjusted to LPR status. The final rule is amended accordingly.

The Service has also reconsidered the duration of Family Unity benefits that will be granted to the children of LIFE Legalization applicants. If an alien is 20 years or older and applies for initial, or an extension of, Family Unity benefits based on his or her parent's pending application for LIFE Legalization, he or she will be granted Family Unity benefits that will end on the day before the alien turns 21 years of age. If an alien is 19 years or older and applies for initial, or an extension of, Family Unity benefits pursuant to the LIFE Act Amendments based on his or her parent's adjustment to LPR status pursuant to LIFE Legalization, he or she will be granted Family Unity benefits that will end on the day before the alien turns 21 years of age. This will prevent a situation where the Service will be required to terminate Family Unity benefits when the child ages-out. This has been codified in the final rule.

Congressional Review Act

Although this rule constitutes a ''major rule'' as that term is defined in 5 U.S.C. 804(2)(A), the Department finds that under 5 U.S.C. 808(2) good cause exists for implementation of this rule on June 4, 2002. The reason for immediate implementation is as follows: The provisions of Public Law 106–553 require that the Service provide a one-year application period for LIFE Legalization applicants. The regulations implemented by the interim rule published on June 1, 2001, provided that the one-year application period would expire on May 31, 2002. Making this rule effective immediately upon publication in the **Federal Register** is necessary to ensure that the new one-year application period will begin before the one year application period under the interim rule ends. Allowing a gap between the two application periods would create confusion and thus be contrary to the public interest.

Administrative Procedure Act

For the reasons just stated with respect to the Congressional Review Act, the Department also finds that this regulation falls within the ''good cause'' exception found at 5 U.S.C. 553(d)(3). Delaying implementation of this final rule would be contrary to the public interest.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because of the following factors. This rule applies to individuals, not small entities, and allows certain class action participants who entered before January 1, 1982, to apply for adjustment of status. It therefore has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 804). This rule will result in an effect on the economy of:

$43,293,000 for 2001;
$152,195,875 for 2002; and
$37,920,000 for 2003.

This increase is directly associated with the expected increase in the number of applications as a result of Public Laws 106–553 and 106–554, and the increase in fee that is provided for in section 245A(c)(7) of the Act (8 U.S.C. 1255a(c)(7)). The Service estimates that in fiscal year 2001, a total of 263,000 applications have been submitted because of the LIFE Act Legalization and Family Unity provisions as follows:

100,000 Forms I–485;
50,000 Forms I–131;
5,000 Forms I–193;
100,000 Forms I–765; and
8,000 Forms I–817.

The Service projects that in fiscal year 2002, a total of 894,000 applications will be submitted as follows:

300,000 Forms I–485;
155,000 Forms I–131;
15,000 Forms I–193;
400,000 Forms I–765; and
24,000 Forms I–817.

The Service projects that in fiscal year 2003, a total of 328,000 applications will be submitted as follows:

100,000 Forms I–130;
20,000 Forms I–131;
200,000 Forms I–765; and
8,000 Forms I–817.

Executive Order 12866

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

submitted to the Office of Management and Budget for review.

Executive Order 13132

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

Executive Order 12988

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

Family Assessment

The Attorney General has reviewed this rule and has determined that it may affect family well-being as that term is defined in section 654 of the Treasury General Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681, Div. A. Accordingly, the Attorney General has assessed this action in accordance with the criteria specified by section 654 (c)(1). In this rule, the Family Unity provisions of the LIFE Act Amendments positively affect the stability of the family by providing a means for the family unit to remain intact.

Paperwork Reduction Act of 1995

The information collection requirement contained in this rule, Form I–485 Supplement D, is being revised. This form will be submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act.

List of Subjects

8 CFR Part 100

Organization of functions (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 245a

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

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

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR parts 100, 103, 236, 245a, 274a and 299 which was published at 66 FR 29661 on June 1, 2001, is adopted as a final rule with the following changes:

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

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

Authority: 8 U.S.C. 1101, 1103, 1255a, and 1255a note.

2. Section 245a.6 is added to part 245a, Subpart A, to read as follows:

§ 245a.6 Treatment of denied application under part 245a, Subpart B.

If the district director finds that an eligible alien as defined at § 245a.10 has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director shall consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A). In such an adjudication using this Subpart A, the district director will deem the ''date of filing the application'' to be the date the eligible alien establishes that he or she was ''front-desked'' or that, though he or she took concrete steps to apply, the front-desking policy was a substantial cause of his or her failure to apply. If the eligible alien has established eligibility for adjustment to temporary resident status, the LIFE Legalization application shall be deemed converted to an application for temporary residence under this Subpart A.

3. Section 245a.10 is amended by:

a. Revising the definition of ''eligible alien''; and by

b. Adding the definition of ''written claim for class membership'' immediately after the definition of ''prima facie.''

The addition and revision read as follows:

§ 245a.10 Definitions.

* * * * *

Eligible alien means an alien (including a spouse or child as defined at section 101(b)(1) of the Act of the alien who was such as of the date the alien alleges that he or she attempted to file or was discouraged from filing an application for legalization during the original application period) who, before October 1, 2000, filed with the Attorney General a written claim for class membership, with or without filing fee, pursuant to a court order issued in the case of:

* * * * *

Written claim for class membership means a filing, in writing, in one of the forms listed in § 245a.14 that provides the Attorney General with notice that the applicant meets the class definition in the cases of *CSS, LULAC* or *Zambrano.*

4. Section 245a.11 is amended by revising paragraph (a) to read as follows:

§ 245a.11 Eligibility to adjust to LPR status.

* * * * *

(a) He or she properly files, with fee, Form I–485, Application to Register Permanent Residence or Adjust Status, with the Service during the application period beginning June 1, 2001, and ending June 4, 2003.

* * * * *

5. Section 245a.12 is amended by:

a. Revising paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3), (a)(4) introductory text, and (a)(4)(i);

b. Revising paragraphs (d)(1), (d)(2), and (d)(10);

c. Adding a sentence at the end of paragraph (f); and by

d. Removing paragraph (g).

The additions and revisions read as follows:

§ 245a.12 Filing and applications.

(a) *When to file.* The application period began on June 1, 2001, and ends on June 4, 2003. To benefit from the provisions of LIFE Legalization, an alien must properly file an application for adjustment of status, Form I–485, with appropriate fee, to the Service during the application period as described in this section. All applications, whether filed in the United States or filed from abroad, must be postmarked on or before June 4, 2003, to be considered timely filed.

(1) If the postmark is illegible or missing, and the application was mailed from within the United States, the Service will consider the application to

be timely filed if it is *received* on or before June 9, 2003.

(2) If the postmark is illegible or missing, and the application was mailed from outside the United States, the Service will consider the application to be timely filed if it is *received* on or before June 18, 2003.

(3) If the postmark is made by other than the United States Post Office, and is filed from within the United States, the application must bear a date on or before June 4, 2003, and must be received on or before June 9, 2003.

(4) If an application filed from within the United States bears a postmark that was made by other than the United States Post Office, bears a date on or before June 4, 2003, and is received after June 9, 2003, the alien must establish:

(i) That the application was actually deposited in the mail before the last collection of the mail from the place of deposit that was postmarked by the United States Post Office June 4, 2003; and

* * * * *

(d) * * *

(1) The Form I–485 application fee as contained in 8 CFR 103.7(b)(1).

(2) The fee for fingerprinting as contained in 8 CFR 103.7(b)(1), if the applicant is between the ages of 14 and 79.

* * * * *

(10) Proof of citizenship skills as described in § 245a.17. This proof may be submitted either at the time of filing the application, subsequent to filing the application but prior to the interview, or at the time of the interview.

* * * * *

(f) *Evidence.* * * * Subject to verification by the Service, if the evidence required to be submitted by the applicant is already contained in the Service's file or databases relating to the applicant, the applicant may submit a statement to that effect in lieu of the actual documentation.

* * * * *

6. Section 245a.13 is amended by:

a. Revising paragraph (e) introductory text;

b. Revising the first sentence in paragraph (e)(1);

c. Redesignating paragraphs (e)(2) through (e)(5), as paragraphs (e)(3) through (e)(6) respectively;

d. Adding a new paragraph (e)(2);

e. Removing the last sentence from redesignated paragraph (e)(4)(ii); and by

f. Revising paragraph (f).

The additions and revisions read as follows:

§ 245a.13 During pendency of application.

* * * * *

(e) *Travel while the application is pending.* This paragraph is authorized by section 1104(c)(3) of the LIFE Act relating to the ability of an alien to travel abroad and return to the United States while his or her LIFE Legalization adjustment application is pending. Parole authority is granted to the Missouri Service Center Director for the purposes described in this section. Nothing in this section shall preclude an applicant for adjustment of status under LIFE Legalization from being granted advance parole or admission into the United States under any other provision of law or regulation for which the alien may be eligible.

(1) An applicant for LIFE Legalization benefits who wishes to travel during the pendency of the application and who is applying from within the United States should file, with his or her application for adjustment, at the Missouri Service Center, a Form I–131, Application for Travel Document, with fee as set forth in § 103.7(b)(1) of this chapter. * * *

(2) An eligible alien who has properly filed a Form I–485 pursuant to this Subpart B, and who needs to travel abroad pursuant to the standards prescribed in section 212(d)(5) of the Act, may file a Form I–131 with the district director having jurisdiction over his or her place of residence.

* * * * *

(f) *Stay of final order of exclusion, deportation, or removal.* The filing of a LIFE Legalization adjustment application on or after June 1, 2001, and on or before June 4, 2003, stays the execution of any final order of exclusion, deportation, or removal. This stay shall remain in effect until there is a final decision on the LIFE Legalization application, unless the district director who intends to execute the order makes a formal determination that the applicant does not present a prima facie claim to LIFE Legalization eligibility pursuant to §§ 245a.18(a)(1) or (a)(2), or §§ 245a.18(c)(2)(i), (c)(2)(ii), (c)(2)(iii), (c)(2)(iv), (c)(2)(v), or (c)(2)(vi), and serves the applicant with a written decision explaining the reason for this determination. Any such stay determination by the district director is not appealable. Neither an Immigration Judge nor the Board has jurisdiction to adjudicate an application for stay of execution of an exclusion, deportation, or removal order, on the basis of the alien's having filed a LIFE Legalization adjustment application.

7. Section 245a.14 is amended by:

a. Redesignating paragraph (e) as paragraph (g); and by

b. Adding paragraphs (e) and (f).

New paragraphs (e) and (f) read as follows:

§ 245a.14 Application for class membership in the CSS, LULAC, or Zambrano lawsuit.

* * * * *

(e) Form I–765, Application for Employment Authorization, submitted pursuant to a court order granting interim relief.

(f) An application for a stay of deportation, exclusion, or removal pursuant to a court's order granting interim relief.

* * * * *

§ 245a.16 [Amended]

8. Section 245a.16 is amended by removing the last sentence of paragraph (b).

§ 245a.17 [Amended]

9. Section 245a.17(c)(1) is amended by revising the term ''or older; or'' to read ''or older on the date of filing; or''.

10. Section 245a.18 is amended by:

a. Revising paragraphs (c)(2)(i) and (c)(2)(ii);

b. Redesignating paragraphs (c)(2)(iii) and (c)(2)(iv) as paragraphs (c)(2)(v) and (c)(2)(vi), respectively;

c. Adding paragraphs (c)(2)(iii) and (c)(2)(iv);

d. Removing the introductory text of paragraph (d);

e. Removing paragraph (d)(2);

f. Redesignating paragraph (d)(3) as paragraph (d)(2);

g. Revising newly redesignated paragraph (d)(2); and by

h. Adding paragraph (d)(3).

The additions and revisions read as follows:

§ 245a.18 Ineligibility and applicability of ground of inadmissibility.

* * * * *

(c) * * *

(2) * * *

(i) Section 212(a)(2)(A)(i)(I) (crimes involving moral turpitude);

(ii) Section 212(a)(2)(A)(i)(II) (controlled substance, except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana);

(iii) Section 212(a)(2)(B) (multiple criminal convictions);

(iv) Section 212(a)(2)(C) (controlled substance traffickers);

* * * * *

(d) * * *

(2) An alien who has a consistent employment history that shows the ability to support himself or herself even though his or her income may be below the poverty level is not excludable under paragraph (c)(2)(vi) of

this section. The alien's employment history need not be continuous in that it is uninterrupted. In applying the Special Rule, the Service will take into account an alien's employment history in the United States to include, but not be limited to, employment prior to and immediately following the enactment of IRCA on November 6, 1986. However, the Service will take into account that an alien may not have consistent employment history due to the fact that an eligible alien was in an unlawful status and was not authorized to work. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for determination of public charge.

(3) In order to establish that an alien is not inadmissible under paragraph (c)(2)(vi) of this section, an alien may file as much evidence available to him or her establishing that the alien is not likely to become a public charge. An alien may have filed on his or her behalf a Form I–134, Affidavit of Support. The failure to submit Form I–134 shall not constitute an adverse factor.

* * * * *

11. Section 245a.20 is amended by revising paragraph (a)(2), to read as follows:

§ 245a.20 Decisions, appeals, motions, and certifications.

(a) * * *

(2) *Denials.* The alien shall be notified in writing of the decision of denial and of the reason(s) therefor. When an adverse decision is proposed, the Service shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted a period of 30 days from the date of the notice in which to respond to the notice of intent to deny. All relevant material will be considered in making a final decision. If inconsistencies are found between information submitted with the adjustment application and information previously furnished by the alien to the Service, the alien shall be afforded the opportunity to explain discrepancies or rebut any adverse information. An applicant affected under this part by an adverse decision is entitled to file an appeal on Form I–290B, Notice of Appeal to the Administrative Appeals Office (AAO), with required fee specified in § 103.7(b)(1) of this chapter. Renewal of employment authorization issued pursuant to § 245a.13 will be granted until a final decision has been rendered on appeal or until the end of the appeal period if no appeal is filed. After exhaustion of an appeal, an alien who believes that the grounds for denial have been overcome may submit another application with fee, provided that the application is submitted on or before June 4, 2003.

* * * * *

12. Section 245a.31 is amended by revising paragraph (c) to read as follows:

§ 245a.31 Eligibility.

* * * * *

(c) If applying for Family Unity benefits on or after June 5, 2003, he or she is the spouse or unmarried child under the age of 21 of an alien who has filed a Form I–485 pursuant to this Subpart B.

13. Section 245a.34 is amended by revising paragraphs (b) and (c) to read as follows:

§ 245a.34 Protection from removal, eligibility for employment, and period of authorized stay.

* * * * *

(b) *Duration of protection from removal.* When an alien whose application for Family Unity benefits under the LIFE Act Amendments is approved, he or she will receive protection from removal, commencing with the date of approval of the application. A grant of protection from removal under this section shall be considered effective from the date on which the application was properly filed.

(1) In the case of an alien who has been granted Family Unity benefits under the LIFE Act Amendments based on the principal alien's application for LIFE Legalization, any evidence of protection from removal shall be dated to expire 1 year after the date of approval, or the day before the alien's 21st birthday, whichever comes first.

(2) In the case of an alien who has been granted Family Unity benefits under the LIFE Act Amendments based on the principal alien's adjustment to LPR status pursuant to his or her LIFE Legalization application, any evidence of protection from removal shall be dated to expire 2 years after the date of approval, or the day before the alien's 21st birthday, whichever comes first.

(c) *Employment authorization.* An alien granted Family Unity benefits under the LIFE Act Amendments is authorized to be employed in the United States.

(1) In the case of an alien who has been granted Family Unity benefits based on the principal alien's application for LIFE Legalization, the validity period of the employment authorization document shall be dated to expire 1 year after the date of approval of the Form I–817, or the day before the alien's 21st birthday, whichever comes first.

(2) In the case of an alien who has been granted Family Unity benefits based on the principal alien's adjustment to LPR status pursuant to his or her LIFE Legalization application, the validity period of the employment authorization document shall be dated to expire 2 years after the date of approval of the Form I–817, or the day before the alien's 21st birthday, whichever comes first.

* * * * *

14. Section 245a.37 is amended by revising paragraph (a)(3) to read as follows:

§ 245a.37 Termination of Family Unity Program benefits.

(a) * * *

(3) The alien, upon whose status Family Unity benefits under the LIFE Act were based, fails to apply for LIFE Legalization by June 4, 2003, has his or her LIFE Legalization application denied, or loses his or her LPR status; or

* * * * *

PART 299—IMMIGRATION FORMS

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

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

16. Section 299.1 is amended in the table by revising the entry for Form ''I–485 Supplement D'', to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* *	*	* *
I–485 Supplement D.	.....	LIFE Legalization Supplement to Form I–485 Instructions.
* *	*	* *

Dated: May 29, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–13918 Filed 5–30–02; 4:59 pm]

BILLING CODE 4410–10–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 104, and 113

[Notice 2002–8]

Brokerage Loans and Lines of Credit

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 2001, amended the Federal Election Campaign Act (''FECA'' or ''the Act'') to allow a candidate to obtain a loan derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate. The Federal Election Commission (''Commission'') is issuing this final rule to implement this amendment to the FECA including reporting requirements. Further information is provided in the supplementary information that follows.

DATES: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days. 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Acting Associate General Counsel, or Ms. Mai T. Dinh, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: As part of its 1999 legislative recommendations to Congress, the Commission sought guidance '' * * * on whether candidate committees may accept contributions which are derived from advances from a financial institution, such as advances on a candidate's brokerage accounts, credit card, or home equity line of credit * * * '' *See* 1999 Fed. Election Comm. Annual Rep. at 45 (2000). The Commission recognized that, since the FECA was first enacted, financial institutions have created new financing products to allow consumers more access to credit. The Commission recommended that the FECA be amended to allow candidates to access these new forms of credit to finance their campaigns for federal office, provided that the extension of credit is done in accordance with applicable law, under commercially reasonable terms and by persons who make these loans in the normal course of their business. *Id.*

In the Department of Transportation and Related Agencies Appropriations Act, 2001, Congress amended the FECA (2 U.S.C. 431(8)(B)) to exclude from the definition of contribution ''a loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate* * * '' The amendment also included the three conditions contained in the Commission's legislative recommendation described above. The Department of Transportation and Related Agencies Appropriations Act, 2001, became Public Law 106–346 on October 23, 2000.[1]

The Commission is issuing these final rules to implement this amendment to the FECA. The final rules also include the reporting requirements associated with obtaining and repaying loans derived from brokerage accounts, credit card advances, and lines of credit. In addition to publishing the final rules in the **Federal Register**, the Commission is submitting these final rules to Congress for 30 legislative days before publishing an effective date. *See* 2 U.S.C. 438(d). This submission will satisfy the requirements of the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), requiring agencies to submit final rules to the Speaker of the House of Representatives and the President of the Senate and to publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on brokerage loans and lines of credit were transmitted to Congress on May 28, 2002.

Explanation and Justification

On July 25, 2001, the Commission published a Notice of Proposed Rulemaking (''NPRM'') containing its proposal to make the regulatory changes that would implement the amendment to the FECA to permit candidates to receive advances from their brokerage accounts, credit cards, home equity lines of credit, or other lines of credit. 66 FR 38576. The Commission raised several issues in the NPRM and solicited comments on those issues, as well as the proposed rules in general. The Commission also announced that it would hold a public hearing on September 19, 2001, if there were sufficient requests to testify. The deadline for submitting comments and requesting to testify at the public hearing was August 24, 2001. Because the Commission did not receive any requests to testify, it canceled the public hearing. The notice of the cancellation was published in the **Federal Register** on September 11, 2001. 66 FR 47120. The Commission received only one comment, which was from Mr. Scott Holz, Senior Counsel at the Board of Governors of the Federal Reserve System.

Amendment to Definitions of Contribution and Expenditure

11 CFR 100.7 Contribution (2 U.S.C. 431(8))

1. General Provisions on Brokerage Loans and Lines of Credit

In order to exempt loans covered by this amendment to the FECA from the definition of ''contribution,'' the final rules amend 11 CFR 100.7(b) by changing the introductory language of paragraph (b)(11) and adding a new 11 CFR 100.7(b)(22) to include brokerage loans, credit card advances, and other lines of credit made to candidates as among the items that are not considered contributions. The amended and new paragraphs track the language of the amendment to the FECA including the conditions set forth, along with some additional clarifications and guidance regarding reporting requirements.

The Commission recognizes that commercial banks offer various lines of credit to their customers. Because the amendment to the FECA specifically establishes different criteria for lines of credit for candidates, the Commission is amending 11 CFR 100.7(b)(11) to exempt specifically brokerage loans, credit card advances, and other lines of credit extended to candidates from the requirements of bank loans contained in section 100.7(b)(11). The final rules amend paragraph (b)(11) by adding a sentence at the end of the introductory text that states that brokerage loans, credit card advances, and other lines of credit made to candidates under section 100.7(b)(22) are not subject to section 100.7(b)(11). This exception also includes overdrafts made on personal checking or savings accounts of candidates because overdraft protection is one form of a line of credit. Thus, overdrafts made on a candidate's personal bank accounts are subject to the requirements of new section 100.7(b)(22). It is important to note that section 100.7(b)(11) will still apply to all loans and lines of credit made to a political committee and to conventional bank loans made to a candidate. No substantive comments were received regarding this issue.

[1] Public Law 106–346 included other statutory changes regarding reporting of independent expenditures, which has been addressed in a separate rulemaking. *See* Independent Expenditure Reporting Final Rules, 67 FR 12834 (March 20, 2002).

2. Endorsers, Guarantors, and Co-Signers

New paragraph (b)(22) implements the three statutory requirements for obtaining a loan derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit, which are: that the loan is made in accordance with applicable law; that the loan is made under commercially reasonable terms; and that persons making the loans make such loans in the normal course of their business. This new regulation also addresses situations where there are endorsers, guarantors, or co-signers of these loans. New paragraph (b)(22), similar to current paragraph (b)(11), provides that an endorser, guarantor, or co-signer is considered a contributor for the amount that the endorser, guarantor or co-signer is liable. This information must be disclosed on the Schedule C or C–P. See below. The exception is when the endorser, guarantor, or co-signer is the spouse of the candidate and the candidate's share of collateral used to obtain a secured loan equals or exceeds the amount of the loan. *See* 11 CFR 100.7(a)(1)(i)(D). Under proposed section 100.7(b)(22)(ii)(B) in the NPRM, when a spouse is an endorser, guarantor, or co-signer of an unsecured loan, the spouse would not be considered a contributor if the candidate uses, in connection with the campaign, only one-half of the available credit. The Commission sought comments on whether the regulations should allow the candidate to use the entire amount of the available credit for use in connection with a campaign in instances where the loan is in the ordinary course of business and the candidate is liable for the entire amount of the loan even though the spouse has endorsed, guaranteed, or co-signed for the loan. The Commission received no comments on this issue. In order for new section 100.7(b)(22)(ii)(B) to be consistent with the existing requirements of current paragraphs 100.7(a)(1)(i)(D) and (b)(11) regarding spouses who are endorsers, guarantors, or co-signers,[2] the Commission decided not to change the language in the proposed rule. Because no collateral is offered for unsecured debt, one-half of the available credit is a reasonable amount.

[2] Paragraph 100.7(a)(1)(i)(D), which paragraph (b)(11) adopts by reference, states that:

The spouse shall not be considered a contributor to the candidate's campaign if the value of the candidate's share of the property equals or exceed, the amount of the loan which is used for the candidate's campaign.

Finally, section 432(e)(2) of the FECA and 11 CFR 101.2 state that a candidate is an agent of the candidate's authorized committee when he or she obtains a loan for use in connection with a campaign. Given that Public Law 106–346 did not distinguish loans derived from an advance on the candidate's brokerage account, credit card, home equity line of credit, or other line of credit, from other types of loans, a candidate who obtains these loans for use in connection with the candidate's campaign is acting as an agent for his or her authorized committee under 2 U.S.C. 432(e) and 11 CFR 101.2.

3. Loans for Routine Living Expenses

In addition to provisions described above, new section 100.7(b)(22) contains a provision that addresses loans derived from an advance on the candidate's brokerage account, credit card, home equity line of credit, or other line of credit that are used for the candidate's routine living expenses. The Commission has determined that such loans would not violate 2 U.S.C. 439a or 11 CFR 113.2(d), prohibiting personal use of campaign funds. The loan, however, must be repaid from the candidate's personal funds.

The Commission sought comment in the NPRM on whether the final rules should contain a descriptive and/or inclusive definition of the phrase ''personal living expenses.'' The Commission did not receive any comments on this question. Upon further examination of 11 CFR part 100, the Commission has determined that ''personal living expenses'' are no different than ''routine living expenses'' as described in 11 CFR 100.8(b)(22). Because it is unnecessary to introduce a new term into the regulations in this instance, the Commission has decided to use ''routine living expenses'' in new section 100.7(b)(22)(iii) instead of ''personal living expenses.''

Although the final rules do not define ''personal living expenses,'' the Commission has determined that it may be useful if this Explanation and Justification includes examples of items that are considered to be ''routine living expenses,'' recognizing that it would be impossible to describe every possible expense of a candidate that is not for the purpose of influencing the candidate's election to Federal office. The examples are: (1) Household items or supplies, including food, furniture, and accessories; (2) funeral, cremation, or burial expenses; (3) clothing, other than clothing purchased to attend campaign related events or appearances; (4) tuition payments, other than those associated with training relating to the campaign; (5) mortgage, rent, and utility payments, and maintenance and repair expenses associated with residential real property; (6) investment expenses such as acquiring securities on margin if no amount of the investment and its proceeds are used for the purpose of influencing the candidate's election for Federal office; (7) vehicle expenses, including loan payments, gas, insurance, maintenance, and repair; (8) charitable donations unless the candidate receives compensation for services to the charitable entity that become personal funds of the candidate and then are used for the purpose of influencing the candidate's election for Federal office; and (9) travel expenses if the travel is unrelated to the campaign.

A. Loans Used Exclusively for Routine Living Expenses. In the NPRM the Commission sought comments on whether the final rule should require the candidate's authorized committee to report loans used exclusively for the candidate's routine living expenses. The Commission did not receive any comments on this issue. If a candidate used all of the loan proceeds for routine living expenses, then it logically follows that none of the loan proceeds is used for the purpose of influencing the candidate's election for federal office. Therefore, the Commission concludes that the reporting requirements in the final rule, which remains unchanged from the proposed rule, are a reasonable approach to loans used for this purpose. Under new paragraph 100.7(b)(22)(iii)(A), loans used *solely* for routine living expenses do not need to be reported in accordance with 11 CFR part 104.

B. Loans Used for Routine Living Expenses and for the Purpose of Influencing the Candidate's Election for Federal Office. Unlike loans that are used exclusively for routine living expenses, the final rules require reporting of loans that are used both for routine living expenses and for the purpose of influencing the candidate's election for federal office. Under new section 100.7(b)(22)(iii)(D), if a loan or an advance that is derived from the candidate's brokerage account, credit card, home equity line of credit, or other line of credit is used for the purpose of influencing the candidate's election for Federal office and for other purposes, including routine living expenses, then the portion that is used for the purpose of influencing the candidate's election for Federal office must be reported under 11 CFR part 104. For example, if a candidate establishes a margin account with a brokerage firm to acquire additional securities on margin and to obtain non-purpose credit to finance the

campaign, then the non-purpose credit used to finance the campaign must be reported, but the credit used to purchase securities purchased on margin does not need to be reported.

C. Repayments of Loans Used for Routine Living Expenses by Third Parties. Under new paragraphs (b)(22)(iii)(C), the candidate's principal campaign committee must report a loan that is used for routine living expenses if a third party, except the candidate's spouse, repays, guarantees, endorses, or co-signs the loan, in part or in whole. The third party is deemed to make a contribution in the amount of the endorsement, guarantee, or liability and this amount would be subject to the limitations and prohibitions of the FECA. *See* 11 CFR 113.1(g)(6). Thus, if a third party repays, guarantees, endorses, or co-signs the loan, the authorized committee must report the loan and the repayment under 11 CFR 104.3, 104.8 and 104.9.

D. Defining ''Used for the Candidate's Campaign''. In addition to seeking comment on whether the term ''personal living expenses'' is sufficiently descriptive and inclusive, the Commission also sought comment on whether the final rules should define the scope of the phrase ''used for the candidate's campaign,'' which is included in proposed section 100.7(b)(22)(ii)(A) in the NPRM and is derived from 2 U.S.C. 432(e)(2). No comments concerning this issue were received. After additional analysis, the Commission decided not to define the phrase ''used for the candidate's campaign.'' Rather, the phrases ''used for the candidate's campaign'' and ''used in connection with the campaign'' (in proposed section 100.7(b)(22(ii)(B) in the NPRM) have been replaced by the phrase ''used for the purpose of influencing the candidate's election for Federal office'' in the final rules. This new phrase is derived from the statutory language in 2 U.S.C. 431(8)(A)(i).[3] The amendment to the FECA, that is the basis of this rulemaking, added loans derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, and other lines of credit available to the candidate to the list of valuable services in 2 U.S.C. 431(8)(B) that are not considered as contributions. It is appropriate to use similar terminology because regulatory language should reflect the statutory language on which it is based and section 100.7 is grounded in 2 U.S.C. 431(8).

The only difference is that the regulatory language of new paragraph 100.7(b)(22) limits the application to the *candidate's* election, not to *any* election, for Federal office. For example, if Candidate X uses a draw on his own personal line of credit to make a contribution to Candidate Y's campaign, then Candidate X's committee does not have to report the draw.

The final rules do not contain a definition of ''used for the purpose of influencing the candidate's election for Federal office'' because the meaning of the phrase ''for the purpose of influencing any election for Federal office'' has been extensively discussed in advisory opinions, enforcement actions (matter under review or ''MUR''), and court cases. *See e.g. FEC* v. *Ted Haley Cong. Comm.*, 852 F.2d 111, 114–16 (9th Cir. 1998); Advisory Opinions 1983–12, 1990–5, and 1992–6; MUR 3918 (Hyatt for Senate). The court cases, advisory opinions, and enforcement actions provide guidance on when a loan is being used for the purpose of influencing the candidate's election for Federal office.

E. Bank Loans Used for Routine Living Expenses. The NPRM sought comments on whether the final rules should make similar clarifications regarding the reporting of bank loans that are used solely for the candidate's personal living expenses. The Commission did not receive any comments on this issue. The FECA standards for bank loans are higher than those for loans derived from a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit. Bank loans are required, among other things, to be made on a basis that assures repayment and must be subject to a due date or amortization schedule, requirements that do not generally exist for loans derived from a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit. See 2 U.S.C. 431(8)(B)(vii)(II). Thus, the FECA already provides for greater safeguards ensuring repayment of bank loans. Consequently, the Commission has concluded that it is not necessary to amend the bank loan rules at this time to address more specifically loans whose proceeds are used for routine living expenses.

4. Repayments of Loans by Authorized Committees to Either the Candidate or the Lending Institution

Under new section 100.7(b)(22)(iv), the candidate's authorized committee will have the option of repaying the loan directly to the lending institution or to the candidate. The NPRM included an alternative approach as to how the candidate's authorized committee must accept and use the proceeds of a loan derived from a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit, and repays that loan. The alternative approach set out in the proposed rules would require that the initial receipt and eventual repayment of the loan must pass through the candidate's personal account. In other words, the lending institution must disburse the loan proceeds to the candidate who would then loan or contribute the money to the authorized committee. If the candidate loans the money to the authorized committee, the committee would be required to repay the loan to the candidate, not to the lending institution, and the candidate would then repay the lending institution. If the candidate makes a contribution as a gift to the campaign, the committee would not repay either the candidate or the financial institution.

The Commission did not receive any comments to this alternative approach. The final rules do not adopt this alternative approach in order to allow the candidates and their authorized committees the flexibility to structure and manage these loans in a manner that fits their needs and circumstances. Requiring that the disbursement and repayment of these loans pass through the candidate's personal bank account may be burdensome and inefficient for some candidates and their committees. Therefore, the final rules allow the candidate and the authorized committee to decide whether the disbursement of the loan proceeds and the loan repayments should pass through the candidate's personal bank account or be paid, and repaid, directly between the financial institution and the authorized committee.

5. Other Amendments to 11 CFR 100.7(b)

The final rules delete an obsolete reference in the introductory text of 11 CFR 100.7(b)(11) to the Federal Savings and Loan Insurance Corporation (''FSLC''). The FSLC has been dissolved and its deposit insurance responsibilities have been transferred to the Federal Deposit Insurance Corporation pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101–73 (August 9, 1989).

11 CFR 100.8 Expenditure

Currently, 11 CFR 100.8(b)(12) exempts bank loans from the definition of ''expenditure'' and contains parallel

[3] The statutory language states that ''[t]he term ''contribution'' includes—(i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office; * * *''

language to that found in the exceptions to the definition of ''contribution'' in section 100.7(b)(11). The final rules exempt loans derived from advances on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, from the definition of ''expenditure'' by amending section 100.8(b)(12) and by adding a new section 100.8(b)(24). The amendments to section 100.8(b)(12) are similar to the amendments to section 100.7(b)(11). *See* above. New section 100.8(b)(24) adopts, by reference, the language of new section 100.7(b)(22).

Reporting Requirements

The NPRM included several reporting requirements pertaining to loans derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit for use in connection with the candidate's campaign. Under the proposed rules, the candidate's principal campaign committee would report transactions between the lending institution and the candidate, and between the candidate and the principal campaign committee.

The NPRM also included an alternative reporting approach and sought comments on the approach. Under this alternative, a committee would be required only to report certain limited information about loans derived from advances on brokerage accounts, credit cards, home equity lines of credit, or other lines of credit when the candidate has loaned or contributed outright, as a gift, such funds to the committee. This information would include the name of the institution and any applicable interest rate and the due date. Further, in the situation where the candidate has loaned the funds to the committee, the committee would only be required to report repayments to the candidate, and would not report the repayments by the candidate to the lending institution. This limited reporting approach would be applied to loans from banks as well as to the loans derived from other sources covered by the recent statutory amendment. It would rely on the complaint and audit processes to monitor situations where the lending institution forgives the loan, in part or in whole, or where the candidate relies on third parties to make the repayments to the lending institution. The Commission did not receive any comments on this alternative. The Commission has decided to adopt this alternative reporting approach. The new reporting requirements are described below.

11 CFR 104.3 Contents of Reports

As noted above, the final rules require that loans derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit for use in connection with the candidate's campaign, be reported by the candidate's principal campaign committee. The requirements are set forth in several sections in 11 CFR part 104. In section 104.3, the candidate's principal campaign committee is required to report the loan of money from the candidate as a receipt under revised paragraph (a)(3)(vii)(B). It is also required to report any repayment of the loan to the candidate as a disbursement under revised paragraph (b)(2)(iii)(A). These two paragraphs are amended to reflect that loans from the candidate may derive from a bank loan or an advance from a brokerage account, credit card, home equity line of credit or other lines of credit available to the candidate.

Under the final rules, section 104.3(b)(4)(iii) is amended to specifically include persons who receive repayments from a reporting committee of loans derived from an advance on a candidate's brokerage account, credit card, or lines of credit, as among those who must be identified and itemized in the report. ''Persons'' in this new section include candidates and lending institutions. Section 104.3(b)(4)(iv) is deleted, removing the requirement that the principal campaign committee report each person who receives a repayment from the candidate.

Current 11 CFR 104.3(d) describes the requirements for reporting debts and obligations. The final rules amend this paragraph to set forth the new reporting requirements for loans derived from advances on a candidate's brokerage account, credit card, home equity line of credit and other lines of credit and for bank loans made to candidates. First, the introductory language of paragraph (d) is amended to make clear that these advances must be reported if they are used for the candidate's campaign even if the advances were received before the individual became a candidate for federal office. Second, the reference to ''candidate'' in paragraph (d)(1) is deleted to exclude bank loans to candidates from the reporting requirements of that paragraph. Instead of paragraph (d)(1), bank loans to candidates must now be reported in accordance with paragraph (d)(4) in Schedule C–1 or C–P–1. Political committees must continue to report the information listed in paragraph (d)(1) in Schedule C–1 and C–P–1.

The final rules add a new section 104.3(d)(4) to describe the information that must be disclosed in the report about loans to candidates, including bank loans. The new paragraph requires authorized committees to disclose loans derived from an advance from a candidate's brokerage account, credit card, or line of credit on Schedules C, C–P, C–1, and C–P–1. Current Schedules C, C–P, C–1 and C–P–1 have not been revised to reflect the new reporting requirements for loans to candidates from financial institutions. Rather, the instructions to Schedules C, C–P, C–1 and C–P–1, and to the Detailed Summary Pages for Forms 3 and 3P, will be modified to reflect the new reporting requirements under new section 104.3(d)(4). Revisions to the instructions to these schedules will be transmitted to Congress at a later point, and will become effective at the same time as the amendments to the regulations. The revised instructions will be posted on the Commission's Web site (*www.fec.gov*) and will be available to the public through the Commission's Information Division.

Under new section 104.3(d)(4), committees are required to disclose the following information: date, amount and interest rate of the loan; name and address of the lending institution; and type and value of collateral or security, if any. The Commission did not receive any comments pertaining to this section.

11 CFR 104.8 Uniform Reporting of Receipts

Current 11 CFR 104.8 requires that certain receipts, including loans, be disclosed on Schedule A. The final rules add new paragraph (g) to section 104.8 to describe how receipt of bank loans to candidates and loans derived from an advance from a candidate's brokerage account, credit card, or line of credit must be reported on Schedule A. When the candidate's committee receives the funds directly from the lending institution or from the candidate (as a loan or a contribution, as a gift), it is reported as an itemized entry on Schedule A. A cross reference to section 100.7(b)(22)(iii) is also included in new section 104.8(g) regarding the reporting of loans obtained solely for the candidate's routine living expenses. Unlike the proposed rules, the committee is not required to report loan disbursements to the candidate. Also, the loan must be continuously reported on Schedule C or C–P until it is extinguished. The candidate may choose either to loan or to contribute, as a gift, the loan proceeds to the

authorized committee.[4] If the money is designated as a contribution when the authorized committee reports the receipt, then the authorized committee cannot repay the underlying loan to the financial institution. Any repayment of the underlying loan would constitute conversion of campaign funds for personal use and is prohibited by 11 CFR 113.2(d). The reporting requirements remain the same. The contribution, as a gift, from the candidate to the authorized committee must be reported as an itemized receipt in Schedule A. The underlying loan must be reported on the Schedule C–1 or C–P–1.

11 CFR 104.9 Uniform Reporting of Disbursements

Current 11 CFR 104.9 requires that certain disbursements, including loan repayments, be disclosed on Schedule B. The final rules add new paragraph (f) to section 104.9 to explain how repayments of bank loans to candidates and loans derived from an advance from a candidate's brokerage account, credit card, or line of credit are to be reported on Schedule B. Repayment by the candidate's committee to the lending institution or the candidate is reported as an itemized entry on Schedule B. Unlike the proposed rules, the committee is not required by the final rules to report repayments by the candidate to the lending institution.

11 CFR 104.14 Formal Requirements Regarding Reports and Statements

Unlike the regulations for bank loans to political committees, the final rules do not require principal campaign committees to submit to the Commission loan agreements or similar documents that are connected with a bank loan to the candidate or a loan derived from an advance from a candidate's brokerage account, credit card, or line of credit. However, the alternative reporting approach, which the Commission has adopted in the final rules, contemplates that in lieu of requiring the candidate's committee to disclose detailed information about these loans, the final rules would require candidates to preserve records pertaining to bank loans to the candidates or loans derived from an advance from a candidate's brokerage account, credit card, or line of credit. This will enable the Commission to conduct investigations and audits when necessary, pursuant to the enforcement and audit authority. *See* 2 U.S.C. 437g and 438(b). Therefore, the final rules added new paragraph (b)(4) to section 104.14 that lists the following types of documents that candidates must preserve for three years following the date of the election for which they were candidates:

a. Records that demonstrate the ownership of the accounts or assets securing the loans such as statements for accounts that identify the account holders, the owners of the credit card account, and the names on the deed for the home used for a line of credit;

b. Copies of the executed loan agreements and all security and guarantee statements;

c. Statements of account for all accounts used to secure any loan for the period the loan is outstanding such as brokerage accounts or credit card accounts, and statements on any line of credit account that was used for the purpose of influencing the candidate's election for Federal office;

d. For brokerage loans or other loans secured by financial assets, documentation to establish the source of the funds in the account at the time of the loan; and

e. Documentation (check copies *etc.*) for all payments made on the loan by any person.

The NPRM solicited comments on whether to require the candidate's principal campaign committee to submit loan agreements and similar documents on loans derived from an advance from a candidate's brokerage account, credit card, or line of credit when the committee files Schedule D. The Commission did not receive any comments on this issue. Because the Commission has decided to adopt the alternative reporting approach, the candidate's principal campaign committee is not required to submit these documents.

The Commission, however, did receive a comment concerning the documents that are required to be maintained under section 104.14. The NPRM listed the Federal Reserve's Form T–4 as among the documents that must be maintained for three years. The commenter stated that non-purpose credit extended from margin accounts does not require a Form T–4. Only those that are extended from non-purpose credit accounts require Form T–4. Also, the brokerage firms generally retain the forms and do not necessarily provide a copy to the customer. Therefore, authorized committees do not need to maintain copies of Form T–4 in their files.

Conforming Amendment

11 CFR 113.1 Definitions

Under the final rules, the third party payments provisions of the definition of ''personal use'' in 11 CFR 113.1(g)(6) is amended to include a repayment, endorsement, guarantee, or co-signature of a loan derived from a candidate's brokerage account, credit card, home equity line of credit, or other line of credit and used for the candidate's routine living expenses within the meaning of ''payment.'' A cross reference to section 100.7(b)(22) is included in this paragraph.

Additional Topics on Which No Changes to the Rules Are Being Made

Margin Requirements

The NPRM stated that a loan derived from a brokerage account is obtained by opening a non-purpose credit account. The commenter pointed out that non-purpose credit can also be extended from margin accounts but they are subject to the limitations and regulations of Regulation T, 12 CFR part 220. Under 12 CFR 220.6(e), however, non-purpose credit accounts are not subject to Regulation T's margin requirements but are subject to the rules of the self regulating organizations (''SRO'') that regulate the exchanges. Recognizing that non-purpose credit accounts contain similar inherent risks to margin accounts, the two largest SRO, the New York Stock Exchange (''NYSE'') and the National Association of Securities Dealers (''NASD''), established minimum maintenance margins for non-purpose credit accounts that are applicable to the members in their exchanges.[5] Generally, the minimum maintenance margin is 25 percent.[6] That is, a customer must maintain securities valued at 125 percent of the outstanding non-purpose credit. Individual brokerage firms may require higher maintenance margins.

[4] The contribution is not subject to contribution limitations in 2 U.S.C. 441a(a). *See Buckley* v. *Valeo,* 424 U.S. 1 (1976).

[5] Margin is the amount paid by the customer when using the broker's credit to purchase securities. The maintenance margin is the minimum margin that must be held or maintained in an account. As long as the value of the equity in the customer's account exceeds the maintenance margin, the customer is not required to make payments on the loan. A margin call occurs when the value of a customer's account falls below the maintenance margin and the brokerage firm issues a demand to a customer to deposit more cash or securities into the account so that the value of the account increases to at least the maintenance margin.

[6] However, the Federal Reserve Board may amend Regulation T to change the minimum maintenance for margin accounts. Also, the SRO may change the maintenance margin for non-purpose credit account with the approval of the Securities and Exchange Commission (SEC).

Brokerage firms are supposed to issue a margin call if the equity in a customer's non-purpose credit account falls below the maintenance margin. Both the NYSE and the NASD, however, allow firms not to issue a margin call if the firm is willing to take a charge against its net capital, pursuant to SEC Rule 15c3–1, for the amount the customer would have been required to deposit to meet the margin call.[7] *See* NYSE Rule 431(e)(7) and NASD Rule 2520(e)(7).

Although this practice may be considered to be in the ordinary course of business, nevertheless, the candidate would receive something of value—not having to deposit additional cash or securities into an account—for free. Essentially, the brokerage firm is providing additional collateral to the candidate without being compensated. Even though the brokerage firm may provide the same service to other customers who are not seeking Federal office, the Commission has determined that services offered free of charge by corporations in the ordinary course of business for promotional or good will purposes (if these services might otherwise have required consideration) are prohibited by 2 U.S.C. 441b. *See* Advisory Opinions 1996–2, 1988–25, 1988–12. Moreover, by not making the margin call, the candidate has increased his or her risk exposure and may be less likely to be able to repay the loan.

In the NPRM, the Commission sought comments on whether a brokerage firm that makes a charge against net capital may, under certain circumstances, provide something of value to candidates which is prohibited by 2 U.S.C. 441b. The Commission did not receive any comments on this issue. Given the analysis above, the Commission has concluded that brokerage firms that take a charge against their net capital instead of making a margin call on non-purpose credit accounts used by candidates to finance their campaign are making an unlawful corporate contribution. The final rules do not specifically address this issue because the Federal Reserve Board and the Securities and Exchange Commission have primary jurisdiction over these transactions. Rather, should the situation arise, the Commission may address this issue on a case-by-case basis through its enforcement or advisory opinion processes.

[7] This practice is not available to non-purpose credit extended from margin accounts because the Federal Reserve Board's Regulation T requires that brokers issue a margin call when a margin account falls below the maintenance margin.

Repayment and Termination

Loans derived from a candidate's brokerage account, credit card account, home equity line of credit, or other lines of credit, present several repayment issues. Under 2 U.S.C. 432(e)(2), a candidate is considered an agent of the authorized committee when obtaining a loan for use in connection with the candidate's campaign for federal office. As such, the authorized committee currently has a continuing obligation to report the loan until it is repaid to the lending institution. In practice, customers are not required to make payments on the loans derived from a brokerage account unless the value of the non-purpose credit account falls below the maintenance margin. If the securities in margin and non-purpose credit accounts continually increase in value, then the customer does not have to make any payments. Thus, a candidate could maintain a loan balance well after the candidate is no longer seeking federal office.

Currently, a committee reports the disposition and repayment of its loans, including loans to the candidate that are used for campaign purposes, before it can terminate. For purposes of determining the disposition of these loans, the Commission sought comments on when a brokerage loan should be considered repaid in full and on when a committee can terminate. The Commission did not receive any comments on these questions.

Because the Commission has adopted the alternative reporting approach, the candidate's principal campaign committee no longer must report the candidate's repayments directly to the lending institution. Thus, the committee may terminate once it has repaid the loans made to the committee even if the underlying loan remains outstanding against the candidate. However, it is important to note that the candidate must still preserve the records described in new section 104(b)(4) for three years after the election even if the committee terminates before that date.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules do not have a significant economic impact on a substantial number of small entities. The final rules implement the changes to the FECA expressly permitting candidates to obtain loans from a wider range of financial institutions. This increases the flexibility that candidates would have to seek financing for their campaigns. The requirement to report loans derived from an advance from a candidate's brokerage account, credit card, or line of credit only impacts the candidates and their campaign committees. It does not have a significant economic impact on these committees because they are already required to report all loans that are made in connection with a federal campaign. In fact, the reporting requirements in the final rules are minimal. The changes will not cause committees to devote much additional time or resources to comply with the reporting requirements. Therefore, the attached final rules do not have a significant economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 113

Campaign funds.

For the reasons set out in the preamble, Subchapter A, Chapter I of title 11 of the *Code of Federal Regulations* is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434(a)(11), 438(a)(8).

2. 11 CFR 100.7 is amended by revising the introductory text of paragraph (b)(11) and adding new paragraph (b)(22) to read as follows:

§ 100.7. Contribution (2 U.S.C. 431(8)).

* * * * *

(b) * * *

(11) A loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it: Bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written

instrument; and is subject to a due date or amortization schedule. Such loans shall be reported by the political committee in accordance with 11 CFR 104.3(a) and (d). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement, except that, in the event of a signature by the candidate's spouse, the provisions of 11 CFR 100.7(a)(1)(i)(D) shall apply. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that such agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered a contribution by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors. For purposes of this paragraph (b)(11), an overdraft made on a checking or savings account, other than the personal account of a candidate, shall be considered a contribution by the bank or institution unless: The overdraft is made on an account which is subject to automatic overdraft protection; the overdraft is subject to a definite interest rate which is usual and customary; and there is a definite repayment schedule. However, this paragraph (b)(11) shall not apply to any loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in paragraph (b)(22) of this section.

* * * * *

(22) (i) Any loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, including an overdraft made on a personal checking or savings account of a candidate, provided that:

(A) Such loan is made in accordance with applicable law and under commercially reasonable terms; and

(B) The person making such loan makes loans derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit in the normal course of the person's business.

(i) Each endorser, guarantor, or co-signer shall be deemed to have contributed that portion of the total amount of the loan derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, for which he or she agreed to be liable in a written agreement, including a loan used for the candidate's routine living expenses. Any reduction in the unpaid balance of the loan, advance, or line of credit shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that such agreement does not stipulate the portion of the loan, advance, or line of credit for which each endorser, guarantor, or co-signer is liable, the loan shall be considered a contribution by each endorser or guarantor in the same proportion to the unpaid balance that each endorser, guarantor, or co-signer bears to the total number of endorsers or guarantors. However, if the spouse of the candidate is the endorser, guarantor, or co-signer, the spouse shall not be deemed to make a contribution if:

(A) For a secured loan, the value of the candidate's share of the property used as collateral equals or exceeds the amount of the loan that is used for the candidate's campaign; or

(B) For an unsecured loan, the amount of the loan used for in connection with the candidate's campaign does not exceed one-half of the available credit extended by the unsecured loan.

(iii) (A) A loan derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, that is used by the candidate solely for routine living expenses, as described in 11 CFR 100.8(b)(22), does not need to be reported under 11 CFR part 104 provided that the loan, advance, or line of credit is repaid exclusively from the personal funds of the candidate or payments that would have been made irrespective of the candidacy pursuant to 11 CFR 113.1(g)(6).

(B) Any repayment, in part or in whole, of the loan, advance, or line of credit described in paragraph (b)(22)(iii)(A) of this section by the candidate's authorized committee constitutes the personal use of campaign funds and is prohibited by 11 CFR 113.2.

(C) Any repayment or forgiveness, in part or in whole, of the loan, advance, or line of credit described in paragraph (b)(22)(iii)(A) of this section by a third party (other than a third party whose payments are permissible under 11 CFR 113.1(g)(6)) or the lending institution is a contribution, subject to the limitations and prohibitions of 11 CFR parts 110 and 114, and shall be reported under 11 CFR part 104.

(D) Notwithstanding paragraph (b)(22)(iii)(A) of this section, the portion of any loan or advance from a candidate's brokerage account, credit card account, home equity line of credit, or other line of credit that is used for the purpose of influencing the candidate's election for Federal office shall be reported under 11 CFR part 104.

(iv) The candidate's authorized committee may repay a loan from the candidate that is derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, directly to the candidate or the original lender. The amount of the repayment shall not exceed the amount of the principal used for the purpose of influencing the candidate's election for Federal office and interest that has accrued on that principal.

(v) Loans derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate shall be reported by the candidate's principal campaign committee in accordance with 11 CFR part 104.

* * * * *

3. 11 CFR 100.8 is amended by revising the introductory text of paragraph (b)(12) and adding new paragraph (b)(24) to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(12) A loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration is not an expenditure by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it: Bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written instrument; and is subject to a due date or amortization schedule. Such loans shall be reported by the political committee in accordance with 11 CFR 104.3(a) and (d). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement, except that, in the event of a signature by the candidate's spouse,

the provisions of 11 CFR 100.7(a)(1)(i)(D) shall apply. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that the loan agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered an expenditure by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors. For the purpose of this paragraph (b)(12), an overdraft made on a checking or savings account shall be considered an expenditure unless: The overdraft is made on an account which is subject to automatic overdraft protection; and the overdraft is subject to a definite interest rate and a definite repayment schedule. However, this paragraph (b)(12) shall not apply to any loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in paragraph (b)(24) of this section.

* * * * *

(24) Any loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, as defined in 11 CFR 100.7(b)(22).

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

4. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432 (i), 434, 438(a), 438(b), 439a.

5. 11 CFR 104.3 is amended as follows:

a. Revise paragraph (a)(3)(vii)(B);

b. Revise paragraph (b)(2)(iii)(A);

c. Revise paragraph (b)(4)(iii);

d. Remove and reserve paragraph (b)(4)(iv);

e. Revise the introductory text of paragraph (d);

f. Revise the introductory text of paragraph (d)(1);

g. Revise paragraph (d)(2);

h. Revise paragraph (d)(3); and

i. Add paragraph (d)(4).

The revisions and additions read as follows:

§ 104.3 Contents of reports (2 U.S.C. 434(b), 439(a))

(a) * * *

(3) * * *

(vii) * * *

(A) Loans made, guaranteed, or endorsed by a candidate to his or her authorized committee including loans derived from a bank loan to the candidate or from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.7(b)(22) and 100.8(b)(24); and

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(A) Repayment of loans made, guaranteed, or endorsed by the candidate to his or her authorized committee including loans derived from a bank loan to the candidate or from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.7(b)(22) and 100.8(b)(24);

* * * * *

(4) * * *

(iii) Each person who receives a loan repayment, including a repayment of a loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.7(b)(22) and 100.8(b)(24), from the reporting committee during the reporting period, together with the date and amount of such loan repayment;

(iv) [Reserved]

* * * * *

(d) *Reporting debts and obligations.* Each report filed under 11 CFR 104.1 shall, on Schedule C or D, as appropriate, disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee. Loans, including a loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.7(b)(22), obtained by an individual prior to becoming a candidate for use in connection with that individual's campaign shall be reported as an outstanding loan owed to the lender by the candidate's principal campaign committee, if such loans are outstanding at the time the individual becomes a candidate. Where such debts and obligations are settled for less than their reported amount or value, each report filed under 11 CFR 104.1 shall contain a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the amount paid. *See* 11 CFR 116.7.

(1) In addition, when a political committee obtains a loan from, or establishes a line of credit at, a lending institution as described in 11 CFR 100.7(b)(11) and 100.8(b)(12), it shall disclose in the report covering the period when the loan was obtained, the following information on schedule C–1 or C–P–1:

* * * * *

(2) The political committee shall submit a copy of the loan or line of credit agreement which describes the terms and conditions of the loan or line of credit when it files Schedule C–1 or C–P–1. This paragraph (d)(2) shall not apply to any Schedule C–1 or C–P–1 that is filed pursuant to paragraph (d)(4) of this section.

(3) The political committee shall file in the next due report a Schedule C–1 or C–P–1 each time a draw is made on a line of credit, and each time a loan or line of credit is restructured to change the terms of repayment. This paragraph (d)(3) shall not apply to any Schedule C–1 or C–P–1 that is filed pursuant to paragraph (d)(4) of this section.

(4) When a candidate obtains a bank loan or loan of money derived from an advance on the candidate's brokerage account, credit card, home equity line of credit, or other line of credit described in 11 CFR 100.7(b)(22) and 100.8(b)(24) for use in connection with the candidate's campaign, the candidate's principal campaign committee shall disclose in the report covering the period when the loan was obtained, the following information on Schedule C–1 or C–P–1:

(i) The date, amount, and interest rate of the loan, advance, or line of credit;

(ii) The name and address of the lending institution; and

(iii) The types and value of collateral or other sources of repayment that secure the loan, advance, or line of credit, if any.

* * * * *

6. 11 CFR 104.8 is amended by adding paragraph (g) to read as follows:

§ 104.8 Uniform reporting of receipts.

* * * * *

(g) The principal campaign committee of the candidate shall report the receipt of any bank loan obtained by the candidate or loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.7(b)(22) and 100.8(b)(24), as an itemized entry of Schedule A as follows:

(1) The amount of the loan that is used in connection with the candidate's campaign shall be reported as an itemized entry on Schedule A.

(2) *See* 11 CFR 100.7(b)(22)(iii) for special reporting rules regarding certain loans used for a candidate's routine living expenses.

7. 11 CFR 104.9 is amended by adding paragraph (f) to read as follows:

§ 104.9 Uniform reporting of disbursements.

* * * * *

(f) The principal campaign committee of the candidate shall report its repayment to the candidate or lending institution of any bank loan obtained by the candidate or loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.7(b)(22) and 100.8(b)(24) as an itemized entry on Schedule B.

8. Amend § 104.14 by revising paragraph (b) to read as follows:

§ 104.14 Formal requirements regarding reports and statements.

* * * * *

(b) Each political committee or other person required to file any report or statement under this subchapter shall maintain all records as follows:

(1) Maintain records, including bank records, with respect to the matters required to be reported, including vouchers, worksheets, receipts, bills and accounts, which shall provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness;

(2) Preserve a copy of each report or statement required to be filed under 11 CFR parts 102 and 104, and all records relevant to such reports or statements;

(3) Keep all reports required to be preserved under this section available for audit, inspection, or examination by the Commission or its authorized representative(s) for a period of not less that 3 years after the report or statement is filed (*See* 11 CFR 102.9(c) for requirements relating to preservation of records and accounts); and

(4) Candidates, who obtain bank loans or loans derived from an advance from the candidate's brokerage account, credit card, home equity line of credit, or other lines of credit available to the candidate, must preserve the following records for three years after the date of the election for which they were a candidate:

(i) Records to demonstrate the ownership of the accounts or assets securing the loans;

(ii) Copies of the executed loan agreements and all security and guarantee statements;

(iii) Statements of account for all accounts used to secure any loan for the period the loan is outstanding such as brokerage accounts or credit card accounts, and statements on any line of credit account that was used for the purpose of influencing the candidate's election for Federal office;

(iv) For brokerage loans or other loans secured by financial assets, documentation to establish the source of the funds in the account at the time of the loan; and

(v) Documentation for all payments made on the loan by any person.

* * * * *

PART 113—EXCESS CAMPAIGN FUNDS AND FUNDS DONATED TO SUPPORT FEDERAL OFFICEHOLDER ACTIVITIES (2 U.S.C. 439a)

9. The authority citation for part 113 continues to read as follows:

Authority: 2 U.S.C. 432(h), 438 (a)(8), 439a, 441a.

10. 11 CFR 113.1 is amended by revising the introductory text in paragraph (g)(6) to read as follows:

§ 113.1 Definitions (2 U.S.C. 439a).

* * * * *

(g) * * *

(6) *Third party payments.* Notwithstanding that the use of funds for a particular expense would be a personal use under this section, payment of that expense by any person other than the candidate or the campaign committee shall be a contribution under 11 CFR 100.7 to the candidate unless the payment would have been made irrespective of the candidacy. ''Payment'' includes repayment, endorsement, guarantee, or co-signature of a loan described in 11 CFR 100.7(b)(22) and used for the candidate's routine living expenses. Examples of payments considered to be irrespective of the candidacy include, but are not limited to, situations where—

* * * * *

Dated: May 24, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–13689 Filed 6–3–02; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1710

RIN 2550–AA20

Corporate Governance

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final regulation.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is responsible for ensuring the safety and soundness of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (Enterprises). In furtherance of that responsibility, OFHEO is issuing a final regulation to set forth minimum standards with respect to corporate governance practices and procedures of the Enterprises.

EFFECTIVE DATE: August 5, 2002.

FOR FURTHER INFORMATION CONTACT: David W. Roderer, Deputy General Counsel, telephone (202) 414–3804 (not a toll-free number); or Isabella W. Sammons, Associate General Counsel, telephone (202) 414–3790 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, titled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Act) (12 U.S.C. 4501 *et seq.*) established OFHEO as an independent office within the Department of Housing and Urban Development to ensure that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) are adequately capitalized and operate safely and in compliance with applicable laws, rules, and regulations.

The Enterprises were established and operate under the authority of their respective Federal chartering acts as government-sponsored, privately owned corporations, to be directed by their respective boards of directors to fulfill the public purpose of providing a stable

secondary market for residential mortgages.[1]

Corporate Governance

Corporate governance involves the relationships between an Enterprise, its management, board of directors, shareholders, regulators, and other stakeholders. It provides the structure through which the business objectives and strategies of the Enterprises are set as well as delineating the means of attaining those objectives and monitoring business performance. The chartering acts contain several provisions related to matters of corporate governance. For example, Congress therein provided for establishing principal offices, board member composition and qualifications, board of director powers, compensation of executive officers and employees, and common and preferred stock. The chartering acts, however, are silent with respect to other corporate governance provisions that are commonly addressed for state-chartered corporations under State law.

In recent years, regulators, investor organizations, stock exchanges, and corporations themselves have increased their focus on the importance of sound corporate governance practices and procedures to ensure the long-term success of corporations. Sound corporate governance practices and procedures are essential to the safe and sound operations of the Enterprises and accomplishment of their public policy purposes. As one Enterprise noted in its comments to the proposed regulation, ''[a] well-qualified and effective board of directors is one of the most important elements in maintaining the safety and soundness of a financial institution.'' Thus, corporate governance is one category of risk and risk management that is examined by OFHEO under its annual risk-based examination program and the subject of additional policy guidance.

Examination and Guidance With Respect to Corporate Governance

In furtherance of its safety and soundness supervisory responsibilities, OFHEO routinely conducts risk-based examinations of each Enterprise in four categories: credit, market risk, operations, and corporate governance. As described in the *Examination Handbook* (Dec. 1998),[2] the corporate governance category is comprised of four programs: (1) The Board Governance Program, which assesses the manner in which the Board of Directors discharges its duties and responsibilities in governing the Enterprise; (2) the Management Processes Program, which assesses the processes used to drive behaviors to support the defined corporate goals, standards, and risk tolerances of the Enterprise; (3) the Audit Program, which assesses the appropriateness of reliance of the Board of Directors management on internal or external audits; and lastly, (4) the Management Information Program, which assesses the effectiveness, accuracy, and completeness of information and reports. The factors and criteria used to assess and evaluate the four program areas are set forth in *Risk-based Examinations—Evaluation Criteria (Evaluation Criteria).*[3]

In addition to safety and soundness standards contained in the *Examination Handbook* and the *Evaluation Criteria,* OFHEO has issued safety and soundness policy guidelines. To date, the guidelines address minimum safety and soundness requirements and safety and soundness standards for information. The policy guideline, titled *Minimum Safety and Soundness Requirements,* sets forth in broad terms various minimum board and management responsibilities and functions.[4]

Corporate Governance Regulation

To further support the supervisory scheme with respect to corporate governance, OFHEO issued a proposed corporate governance regulation, published in the **Federal Register** on September 12, 2001.[5] The proposed regulation builds upon and reinforces the annual risk-based examination and supervisory program in that it restates and amplifies upon the minimum safety and soundness standards affecting the corporate governance policies and practices of the Enterprises.

To a large extent, the minimum corporate governance standards set forth in the proposed regulation reflect the current practices of the Enterprises and the current supervisory standards of OFHEO. OFHEO conducts a comprehensive program of review of corporate governance at each Enterprise. Supervisory and examination policies provide for oversight of all facets of board and senior management attention to their responsibilities. OFHEO has had a significant portion of its examination function focused on corporate governance and conducts a vigorous review of all areas determined to be of importance. OFHEO has reported in annual examination reports to Congress that each Enterprise has met and exceeded its safety and soundness standards.

Response to Comments

OFHEO received eleven comment letters on the proposed regulation. Comment letters were received from (1) Fannie Mae; (2) Freddie Mac; (3) the Board Members of Fannie Mae; (4) the Presidential appointees to the board of Fannie Mae; (5) a former Board Member of Fannie Mae; (6) a lawyer with Gibson, Dunn & Crutcher LLP, who is the Chairman of the American Bar Association's Committee on Corporate Governance, on behalf of Fannie Mae; (7) a Widener University professor, on behalf of Freddie Mac; (8) a Georgetown University Law Center professor, on behalf of Freddie Mac; (9) the National Association of Corporate Directors, an educational, publishing, and consulting organization on board leadership; (10) FM Watch, a coalition of eight trade associations; and (11) Consumer Mortgage Coalition, an association of national residential mortgage lenders and servicers.

General Comments

Many of the comments addressed general issues with the overall regulation as proposed. Several of the comments described the proposed regulation as confusing. Some comments insisted that the proposed regulation should be withdrawn, alleging lack of legal authority for OFHEO to issue a regulation relating to the corporate governance of the Enterprises, inconsistency with prevailing corporate governance principles, lack of necessity in light of supervisory examinations conducted by OFHEO, and likely detrimental effect on the ability of the Enterprises to attract and retain quality board members and senior management. Conversely, other

[1] Consistent with the purposes of the chartering acts, the Enterprises are authorized, among other things, to provide stability in the secondary market for residential mortgages; respond appropriately to the private capital market; provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and promote access to mortgage credit throughout the United States (including central cities, rural areas, and underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing. See 12 U.S.C. 1716, with respect to Fannie Mae, and 12 U.S.C. note to 1451, with respect to Freddie Mac.

[2] *Examination Handbook* (Dec. 1998), available at *http://www.ofheo.gov.*

[3] *Risk-based Examinations—Evaluation Criteria,* EG–98–01 (Dec. 31, 1998), available at *http://www.ofheo.gov.*

[4] *Minimum Safety and Soundness Requirements,* PG–00–001 (Dec. 19, 2000), available at *http://www.ofheo.gov.*

[5] 66 FR 47557 (Sept. 12, 2001).

commenters offered that the proposed regulation is a good starting point, but that OFHEO should strengthen the proposal in various recommended ways so as not to limit the supervisory authority of the agency. Other comments objected to certain provisions as having no counterpart in the regulatory schemes of the bank regulatory agencies, or not being appropriate to the Enterprises. Yet others recommended the adoption of additional and more stringent provisions that would be similar to the regulations or guidelines of bank regulatory agencies.

As explained above, OFHEO is responsible under the Act for ensuring the safety and soundness of the Enterprises. Congress charged OFHEO with express statutory authority to do so and to issue regulations to implement and support its statutory responsibilities. The proposed corporate governance regulation was published in furtherance of that authority and to support the risk-based examination process of the agency. The OFHEO regulation neither supplants nor displaces traditional standards of corporate governance as commonly defined by State laws regarding the relationships of corporate board members and management to shareholders and other stakeholders. Indeed, § 1710.10 of the final regulation explicitly clarifies the applicability of such standards to the Enterprises. In contrast, the regulation in largest part sets minimum standards pertaining to the safe and sound operations of the Enterprises under the Act and the respective chartering acts of the Enterprises.

Notably, the comments of both Enterprises and others reflect recognition of the examination program and supervisory process of OFHEO, including the appropriate supervisory role of the agency in relation to the corporate governance practices and procedures of the Enterprises. Indeed, both Enterprises highlighted that the results of recent examinations indicate that OFHEO has determined that they met or exceeded the examination standards in regard to such matters. That is, no commenter asserted that OFHEO lacks statutory authority to oversee and examine the corporate governance program of the Enterprises.

In order to carry out its statutory role and responsibilities, OFHEO is broadly empowered to determine the manner in which it oversees the safe and sound operation of the Enterprises and how it conducts examinations and the scope of such examinations. As set forth in the *Examination Handbook,* OFHEO reviews corporate governance matters as an area of risk appropriately subject to examination and oversight to ensure the safety and soundness of the Enterprises.

The proposed corporate governance regulation, however, differs from the regulatory scheme adopted by the bank regulatory agencies. As several comments noted, the Enterprises are not banks or thrift institutions, inasmuch as the Enterprises do not engage in deposit taking or origination of commercial or consumer loans. Most significantly, the Enterprises have no federal deposit insurance. The Enterprises, however, do enjoy a special status under their federally granted charters. OFHEO, therefore, has fashioned standards to reflect the nature of the Enterprises that generally employ as models the regulatory regimes of bank regulatory agencies without imposing the numerous transaction-related limits and constraints that affect insured banks and thrift institutions. The bank regulatory scheme also imposes stringent conflict-of-interest requirements with respect to insider relationships and transactions beyond the management and corporate governance standards applicable to other companies that are not subject to specific requirements under this regulation.

Assertions that the regulation will engender confusion and be detrimental to the ability of the Enterprises to attract and retain qualified board members and senior management, and those contrary assertions that the regulation should go further are addressed below. In responding to the specific comments, OFHEO is guided primarily by pragmatic objectives for which the comments themselves call, that is, to clarify the relationship of the board of directors with management; to support the examination function by providing both greater transparency and enforceability to supervisory standards; and to ensure clarity of the regulation without narrowing the supervisory prerogatives of OFHEO. These objectives guide the changes to the proposed regulation that OFHEO is adopting in the final regulation.

Specific Comments

Section 1710.1 Purpose

Proposed § 1710.1 reiterates that OFHEO is responsible under the Act for ensuring the safety and soundness of the Enterprises and that, in furtherance thereof, the regulation sets forth certain minimum standards with respect to the corporate governance practices and procedures of the Enterprises. As explained above, the corporate governance regulation establishes a regulatory framework for the performance of the safety and soundness and supervisory responsibilities of OFHEO under the Act. OFHEO received no comments specific to this proposed section and adopts it as proposed with no substantive change.

Section 1710.2 Definitions

As described below, OFHEO received comments with respect to the definitions of several of the defined terms and adopts them as proposed and deletes a few and adopts others as modified to conform to changes elsewhere in the regulation.

Agent, entity, and person. The definitions of these terms are deleted as they are not needed in connection with proposed § 1710.14, discussed below.

Board member. The term was proposed to mean a member of the board of directors; and, for purposes of subpart D of this part, the term ''board member'' included a current or former board member. The definition has been modified by deleting the reference to subpart D and to current or former board members to conform with changes to proposed §§ 1710.30 and 1710.31, discussed below.

Conflict of interest. The definition of this term is deleted as it is not needed in connection with proposed § 1710.14, discussed below.

Executive officer and senior executive officer. The term ''executive officer,'' was proposed to mean any senior executive officer and any senior vice president of an Enterprise and any individual with similar responsibilities, without regard to title, who is in charge of a principal business unit, division, or function of an Enterprise, or who reports directly to the chairperson, vice chairperson, chief operating officer, or president of an Enterprise; and, for purposes of subpart D (the indemnification provisions), the term ''executive officer'' included a current or former executive officer. The term ''senior executive officer,'' was proposed to mean the chairperson of the board of directors, chief executive officer, chief financial officer, chief operating officer, president, vice chairperson, any executive vice president of an Enterprise, and any individual, without regard to title, who has similar responsibilities.

Two commenters noted that the definition of these terms differ from the combined definition of ''executive officer'' adopted by OFHEO in the executive compensation regulation.[6]

[6] 12 CFR part 1770, 66 FR 47550 (Sept. 12, 2001).

The comments recommended that the proposed definition be conformed to the definition set forth in the executive compensation regulation, including the provision that OFHEO will identify the officers who are covered by the definition.

OFHEO has determined not to make the recommended changes. The proposed definitions are essentially similar to the definitions in the executive compensation regulation and do not warrant modification. In addition, the provision that OFHEO will identify the officers covered by the specific requirements of 12 CFR part 1770 is not relevant to the corporate governance regulation and will thus not be incorporated into the final regulation. Also see the discussion below under proposed § 1710.12. The definition has been modified by deleting the reference to subpart D and to current or former board members to conform with changes to proposed §§ 1710.30 and 1710.31, discussed below.

Independent board member. The definition of this term is deleted as unnecessary. See the discussion below under proposed § 1710.11.

Legal expenses and payment. In conformance with changes to proposed §§ 1710.30 and 1710.31, discussed below, the separate definitions of these terms are unnecessary and are deleted.

Section 1710.10 Applicable Law

The proposed section required each Enterprise to elect to follow the corporate governance practices and procedures of one of the following bodies of law, to the extent such provisions are not inconsistent with applicable Federal law, rules, and regulations: the law of the jurisdiction in which the principal office of the Enterprise is located; Delaware General Corporation Law, Del. Code Ann. tit. 8, as amended; or Revised Model Business Corporation Act (RMBCA), as amended. The proposed section also would have required each Enterprise to designate in its bylaws the body of law elected within 90 calendar days from the effective date of the regulation.

Section 1710.10 was proposed to dispel any legal uncertainty as to whether and to what extent standards and procedures of State law apply to corporate governance of the Enterprises. The intent of the proposed approach is to provide the Enterprises with flexibility in structuring their corporate governance practices and procedures while at the same time providing certainty to shareholders and other stakeholders as to the body of corporate law applicable to each Enterprise. The body of law elected by the Enterprises, and legal precedents thereunder, to the extent not inconsistent with applicable Federal standards, set forth the standards of conduct of board members with respect to shareholders.

Two commenters objected to permitting the Enterprises to elect a body of State law or the RMBCA as an inappropriate delegation of the fundamental responsibility of the Federal government for establishing the legal underpinnings of the Enterprises. The comments alleged that the laws applicable to traditional private companies are not fully appropriate for guiding the governance of federally chartered institutions, such as the Enterprises, which were created by Congress to meet specific public purposes. The comments recommended that OFHEO clearly state that the chartering acts and other applicable Federal law are the sole source of the powers of the Enterprises.

OFHEO agrees that the Enterprises are not simply private companies chartered under State law. They were established by Congress and operate under the authority of their respective Federal chartering acts, as government-sponsored, privately-owned corporations, to be directed by their respective board of directors, in compliance with law and regulation and to fulfill particular public purposes.[7] The chartering acts contain various specific corporate governance provisions that are clearly within the realm of the congressionally mandated oversight by OFHEO of the safe and sound operations of the Enterprises. In addition, OFHEO has broad supervisory authority over the corporate behavior of the Enterprises from a safety and soundness perspective. The regulation does not delegate authority to the States, does not in any manner abrogate Federal authority, and does not expand the lawful powers and activities of the Enterprises under their respective chartering acts.

Moreover, the section requiring the election of a specific body of law establishes, in effect, a ''safe harbor'' for an Enterprise that undertakes a corporate governance program conforming to corporate practices and procedures of State law or the RMBCA. An Enterprise and its officers and board members may reasonably assume that corporate practices, procedures, and behaviors that conform to those standards shall be deemed to be safe and sound unless inconsistent with the chartering act or other applicable Federal law, rule, or regulation, or other guidance or directive from OFHEO.[8] In order to underscore that neither State corporate law nor the RMBCA is incorporated wholesale by the election of such a body of law by an Enterprise, OFHEO has revised proposed § 1710.10.

Fannie Mae specifically recommended that the election of law provision be expanded to allow the choice of either the District of Columbia or Virginia, the two jurisdictions in which the Enterprise has significant operations. OFHEO believes the location of the corporate headquarters provides a reasonable nexus for choice of law. The additional options of either Delaware State law or the RMBCA allow for a choice of laws that are well developed by the courts. No further expansion of choice of law is appropriate at this time.

Finally, one commenter requested that the time period to implement the designation in the bylaws of the body of law elected be lengthened to provide sufficient time for the drafting, review and adoption of the requisite amendment to the bylaws. OFHEO has determined not to increase the time period for implementation in light of the 60-day delayed effective date, which, when added to the 90-day implementation period, provides the Enterprises sufficient time.

Section 1710.11 Committees of Board of Directors

Paragraph (a) of the proposed section required that an Enterprise provide in its bylaws for the establishment of committees of the board of directors. It also provided that no committee of the board of directors shall have the authority of the board of directors to amend the bylaws and no committee shall operate to relieve the board of directors or any board member of a responsibility imposed by applicable law, rule, or regulation.

Paragraph (b) of the proposed section required that each Enterprise provide in its bylaws, within 90 calendar days after the effective date of this regulation, for the establishment of two committees, however styled: an audit committee that

[7] OFHEO recognizes that the chartering acts provide a mixture of private control and management along with Federal oversight, as has been done, to a greater or lesser degree, with other companies.

[8] For example, although the RMBCA and Virginia and Delaware corporate law would permit a quorum to be one-third of the board of directors under certain circumstances, such a practice would be inconsistent with the requirement under this regulation that a quorum constitutes at least a majority of the board. Bank regulatory agencies, likewise, provide for a higher quorum requirement. See, for example, the requirements of the Comptroller of the Currency at 12 CFR 7.2009, and those of the Office of Thrift Supervision at 12 CFR 552.6–1. It should be noted that the ''safe harbor'' here is limited; judgment must be exercised in combination with regulatory consultation.

is in compliance with the charter, independence, composition, expertise, and all other requirements of the audit committee rules of the NYSE; and a compensation committee, to include at least three independent board members, the duties of which include, at a minimum, ascertaining that compensation plans for executive officers and employees comply with applicable laws, rules, and regulations and approving the compensation of senior executive officers.

The Enterprises asserted that paragraph (a) is unnecessary in that State law and the RMBCA already provide that board of directors may establish committees and that the board of directors may rely on reports from such board committees in directing the corporation. OFHEO agrees and has modified the final section accordingly. Although board members may rely on reports of various committees, it must be emphasized, however, that the ultimate responsibility for the direction of the Enterprises rests with the entire board of directors.

The Enterprises also objected to the requirement for the establishment of audit and compensation committees as unnecessary because (1) neither the Code of Virginia, District of Columbia Code, the General Delaware Corporation Law, nor the RMBCA require audit or compensation committees; and (2) the Enterprises have established such committees and are required to establish an audit committee by the NYSE listing agreement. Another commenter recommended that OFHEO not adopt the definition of ''independent board member'' as defined by the NYSE, but rather establish rules specifically adapted to the special circumstances of the Enterprises to ensure that the board members are truly independent.

Audit and compensation committees play important roles in the safe and sound operations of the Enterprises and OFHEO has determined, therefore, to retain the requirement for both committees. With respect to the audit committee, OFHEO has determined to retain the reference to the rules of the NYSE, but with the addition of the proviso ''or as otherwise provided by OFHEO,'' clarifying that OFHEO may issue subsequent guidance with respect to the audit committee's composition in the event that an Enterprise is no longer listed with the NYSE or that the NYSE audit committee rules are no longer found to be adequate.

OFHEO has determined to delete the definition of ''independent board member'' that was proposed in § 1710.2. What constitutes independence of board members is adequately defined under the NYSE rules, unless OFHEO determines additional guidance is needed.

Section 1710.12 Compensation of Board Members, Executive Officers, and Employees

Proposed § 1710.12 provided that the compensation of board members, executive officers, and employees is not to be in excess of that which is reasonable and commensurate with their duties and responsibilities and comply with applicable laws, rules, and regulations. The Enterprises asserted that the proposed section exceeds the statutory authority of OFHEO under Section 1318 of the Act,[9] which purportedly limits OFHEO to prohibiting an Enterprise from providing compensation to an executive officer that is not reasonable and comparable with compensation for employment in other similar businesses involving similar duties and responsibilities.

Section 1318 specifically charges OFHEO to prohibit excessive compensation with respect to certain executive officers. A regulation to implement that provision of the Act was adopted on September 12, 2001.[10] Section 1318, however, does not address the separate and primary authority of OFHEO to ensure the safe and sound operations of the Enterprises, under which authority § 1710.12 is issued. That authority is founded in Sections 1302(6) and 1313 of the Act.[11]

Congress has made clear that safety and soundness encompasses regulatory action regarding excessive compensation.[12] The bank regulatory agencies explicitly prohibit compensation that is unreasonable or disproportionate to the services performed by an executive officer, employee, or board member, or that could lead to a material financial loss to an institution. See the *Interagency Guidelines Establishing Standards for Safety and Soundness,* for the Office of the Comptroller of the Currency, 12 CFR part 30; for the Board of Governors of the Federal Reserve System, 12 CFR part 263; for the Federal Deposit Insurance Corporation, 12 CFR part 308, subpart R; and for the Office of Thrift Supervision, 12 CFR part 570.

Section 1710.12 provides for OFHEO to review the adequacy of compensation polices and procedures used by each Enterprise under the obligatory oversight of the board of directors.[13] Section 1710.12 reflects OFHEO examination guidelines used to ensure that policies and practices established by the Enterprises avoid compensation that creates perverse incentives for board members, executive officers, and employees.

The Enterprises also suggested that proposed § 1710.12 is essentially an attempt by OFHEO to set salaries at the Enterprises. OFHEO disagrees. Routine practice under similar Federal standards has not demonstrated any ''setting'' of compensation by Federal regulators.

Two other commenters recommended that OFHEO impose an explicit requirement that the compensation structure of an Enterprise consider the extent to which the individual officer or employee contributes to the fulfillment of the public purpose of the Enterprise. OFHEO has determined that there is no need to reiterate such an expectation in the regulation.

Section 1710.13 Quorum of Board of Directors; Proxies Not Permissible

Proposed § 1710.13 required that each Enterprise provide in its bylaws that, for the transaction of business, a quorum of the board of directors is a majority of the entire board of directors and that a board member may not vote by proxy.

Freddie Mac suggested that the proposed section would unnecessarily and inappropriately supplant otherwise applicable State law and override a Virginia State law provision, which Freddie Mac follows, that permits a company's articles of incorporation or bylaws to adjust the quorum requirement either upward or downward. Freddie Mac asserted that although its bylaws are in compliance with the proposed section, there is no reason for OFHEO to restrict its flexibility.

The Code of Virginia (VA Section 13.1–689), the Delaware General Corporation Law (Section 141), the RMBCA (Section 8.24) include quorum requirements that permit a quorum of no less than one-third of the total number of the members of the board; the District of Columbia Code is silent. None of those bodies of law address proxy requirements. The proposed

[9] 12 U.S.C. 4518.

[10] 12 CFR part 1770, 66 FR 47550 (Sept. 12, 2001).

[11] 12 U.S.C. 4501(6) and 4513, respectively.

[12] Section 39 of the Federal Deposit Insurance Act, 12 U.S.C. 1831p–1(c).

[13] The boards of directors of both Enterprises, as charged by their respective chartering acts, are required to cause the Enterprise to pay such compensation to ''officers, attorneys, employees, and agents'' as the board of directors ''determines reasonable and comparable with compensation for employment in other similar businesses (including other publicly held financial institutions or major financial services companies) involving similar duties and responsibilities.* * *'' *See* 12 U.S.C. 1723a(d)(2) (Fannie Mae) and 12 U.S.C. 1452(c)(9) (Freddie Mac).

quorum and proxy requirements are appropriate minimum standards for Federal safety and soundness purposes necessary to ensure the participation of board members in the deliberative processes of the Enterprises. OFHEO has determined, therefore, to retain the requirements. The proposed language is revised, however, to clarify that the Enterprise may increase the quorum requirement upward when deemed by the Enterprise to be appropriate.

Section 1710.14 Conflict-of-Interest Standards

Section 1710.14, as proposed, required that each Enterprise establish and administer written conflict-of-interest standards that would provide reasonable assurance that board members, executive officers, employees, and agents of the Enterprise discharge their responsibilities in an objective and impartial manner. As proposed, the term ''conflict of interest'' would be defined in § 1710.2(g) as an interest in a transaction, relationship, or activity that might affect adversely, or appear to affect adversely, the ability to perform duties and responsibilities on behalf of the Enterprise in an objective and impartial manner.

In conducting the risk-based examination of the Enterprises with respect to corporate governance, OFHEO assesses whether the board of directors ensures that executive management appropriately defines the operating parameters and risk tolerances of the Enterprise consistent with, among other things, ethical standards. The evaluation criteria for this assessment factor include: (1) Is there an appropriate Code of Conduct? (2) Does the board receive periodic reports on compliance with the Code of Conduct? [14] OFHEO also assesses whether management effectively conveys an appropriate message of integrity and ethical values.[15] In addition, one of the criteria used to determine if the Enterprise has effective programs for recruiting competent staff, is whether employee retention and promotion criteria are aligned with codes of conducts and other behavioral guidelines of the Enterprise.[16]

One commenter suggested that the definition of the term ''conflict of interest'' be revised so that it does not refer to a person's ability to perform duties and responsibilities ''in an objective and impartial'' manner. The commenter suggested that any conflict of interest provision should do no more than require the Enterprises to establish and administer written standards that are designed to preclude situations in which board members, executive officers, and employees face a conflict of interest when discharging their responsibilities on behalf of the Enterprise. Another commenter recommended defining a conflict of interest as a situation in which an actual or apparent question of loyalty arises between a board member's personal interest (financial or otherwise) and his or her responsibilities to the Enterprise.

OFHEO has determined not to adopt these recommendations, but has revised § 1710.14 to clarify that the discharge of duties and responsibilities is on behalf of the Enterprise. In addition, the definition of conflict of interest has been deleted because the examination guidance provided in the *Evaluation Criteria* is adequate and the concept of conflict of interest is a fundamental concept widely understood under traditional precepts of corporate law. OFHEO will continue to review conflict-of-interest standards of the Enterprises and will take action as necessary to ensure that such standards are adequate.

Objections were raised to the use of the term ''assurance'' with respect to the phrase ''standards that will provide reasonable assurance.'' It is not possible for the Enterprises, the commenters explain, to guarantee the state of mind of the affected individuals. Section 1710.14, as proposed, does not require that the conflict-of-interest standards ''guarantee'' that board members, executive officers, employees, and agents will always act in an objective and impartial manner. Rather, § 1710.14 is intended to require that the conflict-of-interest standards be so crafted and implemented so as to ensure that compliance with them will provide reasonable assurance that the affected individuals are to act in an objective and impartial manner on behalf of the Enterprise. To clarify this intent, the language of § 1710.14 has been revised to provide that the written conflict-of-interest standards be ''reasonably designed to assure'' the appropriate conduct.

Objections were also raised to the proposal that the conflict-of-interest standards be required of agents of the Enterprises. Inasmuch as the principal purpose of the regulation is to provide greater transparency as to the respective roles and responsibilities of the board of directors and management, the practices and policies of agents of the Enterprises are beyond the immediate focus of the regulation. Such matters appropriately remain as a matter of course within the proper scope of review by management of each Enterprise in effecting the routine management of its business operations. Therefore, that portion of proposed § 1710.14 related to the inclusion of agents within the conflict-of-interest standards has been deleted. If, at a later time, OFHEO finds it necessary to revisit such matters, it will do so in an appropriate manner. OFHEO expects each Enterprise to ascertain and address any potential or perceived conflict-of-interest an agent may present as a matter of routine business practice.

Two commenters also recommended that OFHEO expand § 1710.14, as proposed, (1) to specifically prohibit an Enterprises from retaliating against an individual or entity that advocates a public policy position adverse to that of the Enterprise, and (2) to require each Enterprise to disclose, at least annually, a list of all employees whose total annual compensation exceeds $100,000 and employees who have been employed, or whose spouse or immediate family member has been employed, by the Federal government, including the Congress, in the last five years. Both recommendations, however, are rejected as being beyond the scope of the proposed regulation.

Section 1710.20 Conduct of Board Members, and Section 1710.21 Responsibilities of Board of Directors

Proposed § 1710.20 would have explicitly required that each board member, in conducting the business of the Enterprise, is to act: (1) On a fully informed, impartial, objective, and independent basis; (2) in good faith and with due diligence, care, and loyalty; (3) in the best interests of the shareholders and the Enterprise; and (4) in compliance with the chartering act of the Enterprise and other applicable laws, rules, and regulations. Furthermore, the proposed section would have required that each board member of an Enterprise is to devote sufficient time and attention to his or

[14] EG–98–01, *supra* note 3, at 28.

[15] The evaluation criteria for this assessment factor include the following: (1) Ascertain if codes of conduct are comprehensive, addressing conflicts of interest, illegal or other improper payments and are periodically acknowledged; (2) Verify the establishment of the tone at the top including explicit moral guidance about what is right and wrong; (3) Determine if everyday dealings with employees, investors, customers, creditors, insurers, competitors, and auditors are based on honesty and fairness; determine if management responds to violations of behavioral standards; (4) Determine if management has stringent policies towards overriding established internal controls; (5) Ascertain that deviations from policies are investigated and documented; ascertain that there are no conditions, such as extreme incentives or temptations, that exist that can unnecessarily and unfairly test people's adherence to ethical values; (6) Determine if controls are in place to reduce temptations that might otherwise exist. *Id.* at 27.

[16] *Id.*, at 26.

her responsibilities in conducting the business of the Enterprise.

Proposed § 1720.21 provided that the board of directors is responsible for managing the conduct and affairs of the Enterprise to ensure that the Enterprise is operated in a safe and sound manner. It included responsibilities such as hiring qualified senior executive officers; ensuring the integrity of the accounting and financial reporting systems of the Enterprise, including independent audits; and remaining informed of the condition, activities, and operations of the Enterprise.

Several commenters objected to proposed §§ 1710.20 and 1710.21 inasmuch as they allegedly depart from prevailing State law by making so-called ''aspirational standards'' enforceable standards, with the potential threat of civil penalties for nonobservance. That is, the proposed regulation would effectively expose board members to a standard of liability arguably stricter than that of the traditional business judgment rule under State law. The commenters argued that the proposed section could cause a well-advised person not to choose a board position at one of the Enterprises when he or she has attractive opportunities to serve elsewhere in a lower risk environment. In addition, the commenters asserted that the proposed provision would cause confusion when compared to the duty of care standards provided under State law and the RMBCA. The commenters asserted that the potential liability of board members should be limited under the business judgment rule, so that, absent self-dealing or bad faith, a board member would not be held liable for what in hindsight might be determined by the agency to have been unreasonable conduct.

OFHEO agrees that it would be inappropriate for OFHEO to alter the liability standard of the business judgment rule with respect to a board member's potential exposure to shareholder actions against an Enterprise. Neither proposed § 1710.20 nor proposed § 1710.21 does so; neither section addresses nor impinges on the business judgment rule, shareholder rights, or board member accountability to shareholders. Rather, proposed section § 1710.20 would set forth minimum standards of board member conduct and proposed § 1710.21 would enumerate certain of the minimum responsibilities of the board of directors deemed to be integral to the safe and sound operation of the Enterprise for Federal supervisory purposes.[17] OFHEO enforces compliance with minimum standards in furtherance of the congressionally-mandated supervisory responsibilities of OFHEO. OFHEO has revised § 1710.21 and expressly states that the section is not intended to affect the potential exposure of board members to shareholder actions under applicable standards of State law.

The arguments that OFHEO, in proposed §§ 1710.20 and 1710.21, would undo State corporate governance law are not only incorrect, but are contrary to the purpose and intentions of § 1710.10, which would require each Enterprise to elect a body of State law or the RMBCA. The regulation would require that a body of law be selected. OFHEO also addresses its supervisory obligations under Federal law to oversee the safe and sound operations of the Enterprises. The obligations of OFHEO are separate and apart from traditional matters of State law. While the comments made on this topic were instructive on the history, progression, and direction of State corporate governance law, they bear little or no relevance here. OFHEO has been consistent in the proposed rule—election of a State law or the RMBCA is directed, in line with the need to protect shareholders and promote corporate purposes; adherence to Federal standards for safe and sound operations pursuant to a separate and distinct regulatory regime are set forth as well. This is not inconsistent, but rather is the nature of Federal and State relations across a broad range of federal regulatory regimes where private companies operating under State laws (whether or not federally charted) are subject to Federal standards based on the exercise by Congress of its constitutional authorities. In all of these regimes, companies and their boards operate with an eye toward both Federal and State law and regulation.

Several commenters objected to the use of the term ''ensure'' with respect to board of director responsibilities and the relationship of the responsibilities of management with that of the board of directors. OFHEO has revised the final section to clarify its intent that OFHEO is not requiring the board of directors to ''guarantee'' outcomes.

Another commenter recommended that proposed § 1710.20 include a specific reference to the obligation of the board of directors to ensure that the activities of the Enterprise are consistent with the authorities under its chartering act and a specific reference to the oversight of internal controls. OFHEO makes no changes in response to these recommendations; references, however, to the chartering acts and internal controls are retained in the revised section.

Two commenters recommended that the list of responsibilities in proposed § 1710.21 specifically require that presidential appointees to the board are to ensure that the Enterprise fulfills its public mission. They also recommended that the regulation require each Enterprise to establish a separate committee composed of presidential appointees with specific responsibility to publish periodic reports on the Enterprise's fulfillment of its public purposes. OFHEO rejects these recommendations inasmuch as each board member, whether elected by shareholders or appointed by the President, is responsible for overseeing the operation and direction of the Enterprise in accordance with its chartering act and the public purposes set forth therein. The chartering acts do not differentiate between elected and appointed board members with respect to their duties and responsibilities.

Two commenters recommended that OFHEO establish rules, modeled after the *Interagency Guidelines Establishing Standards for Safety and Soundness* (Interagency Guidelines) of the bank regulatory agencies, that require review by the board of directors and senior management of areas such as internal controls and information systems, internal audits, external audits, credit underwriting policies and procedures, asset quality and asset growth, and privacy and security safeguards. OFHEO has, however, already published examination and other guidance that addresses those areas and does not deem it necessary to include such explicit requirements in this regulation.

Upon review, OFHEO has determined to revise §§ 1710.20 and 1710.21 to ensure that those provisions best complement the supervisory and examination policies of OFHEO. The new § 1710.15, titled *Conduct and responsibilities of board of directors,* contains general principles while more specific guidance may be found in OFHEO's examination materials. The revised section clarifies that board members are not required to guarantee the successful outcomes of their decisions and deliberations. As discussed above, OFHEO routinely conducts risk-based examinations of the corporate governance operations of the Enterprises, which include regular

[17] As noted above, OFHEO conducts risk-based examinations of each Enterprise with respect to, among other areas, corporate governance. The responsibilities listed in proposed § 1710.21 reflect the current corporate governance examination of the Enterprises and further provide the Enterprises with notice of those minimum responsibilities of the board of directors that OFHEO deems essential to the safe and sound operation of the Enterprises.

assessments of the effectiveness with which the board of directors discharges its duties and responsibilities in governing the Enterprise. In doing so, OFHEO may assess individual board member performance, as well as the conduct of the board as a whole.[18] The body of law and legal precedents thereunder elected by the Enterprises pursuant to § 1710.10, to the extent not inconsistent with applicable Federal rules, set forth standards of conduct of board members with respect to shareholders.

Certain revisions and technical modifications, as discussed above, are appropriate to the proposed regulation. These changes are merited because they continue to support the examination program and standards of OFHEO; they do not diminish the flexibility of OFHEO to review corporate behavior and to determine if safe and sound operations are threatened or a violation of law, rule, or regulation has occurred; and they clarify the intent of OFHEO not to alter the relationship of the board to senior management in day-to-day operations. The board of directors remains responsible for seeing that management adopts policies and procedures that adequately address areas of corporate practice and concern. On this last point, the revised regulation maintains the current strong framework for safe and sound operations and supports the continued ability of the Enterprises to retain and attract the strongest board of directors.

Section 1710.30 Permitted Indemnification Payments, and Section 1710.31 Prohibited Indemnification Payments

Proposed § 1710.30 generally permitted indemnification payments to a board member or executive officer of an Enterprise, in civil actions or administrative proceedings not initiated or undertaken by OFHEO, provided that such payment would not materially adversely affect the safe and sound operations of the Enterprise. Proposed § 1710.31 would have prohibited indemnification payments in connection with administrative proceedings initiated or undertaken by OFHEO that result in a final order or settlement pursuant to which the board member or executive officer is assessed a civil money penalty or is required to cease and desist from or take any affirmative action with respect to the Enterprise.[19]

Several commenters strongly objected to the proposed prohibitions against indemnification in certain enforcement actions initiated by the agency. These commenters asserted that the statutory prohibition in section 1376(g)[20] of the Act (subsection (g)), which expressly prohibits an Enterprise from reimbursing or indemnifying certain individuals for so-called ''third tier'' civil money penalties under section 1376(b)(3),[21] impliedly constrains the authority of OFHEO to impose such sanctions against corporate insiders in any other circumstances such as in ''second tier'' situations. The commenters also asserted that the expression of broad authority in proposed § 1710.31 of OFHEO to prohibit indemnification other than in connection with third-tier civil money penalties would make it difficult for the Enterprises to attract and retain qualified board members and executive officers.

OFHEO disagrees with the assertion that it has no authority beyond that contained in subsection (g) to address indemnification.[22] Neither that subsection nor other provisions of the Act explicitly nor implicitly purports to constrain the discretion of the agency to fashion remedies as appropriate in varying circumstances consistent with OFHEO's safety and soundness authorities under the Act.

The commenters also assert that subsection (g) is a penal statute because it defines when individuals must bear the full practical consequence of financial sanctions. According to one commenter, the Act must be construed strictly to prohibit OFHEO from denying indemnification for other than third tier civil money penalties. The explicit language of subsection (g), however, relates only to the inability of an Enterprise to indemnify corporate insiders in certain circumstances; it does not purport to in any way address the discretionary remedial authority of OFHEO.[23] Furthermore, the canon cited by the commenter that penal statutes are to be construed strictly is not to be applied so as to defeat the purpose of all other rules of statutory construction.[24]

One commenter would apply the canon of statutory construction known as, *expressio unius est exclusio alterius, i.e,* the expression of one thing excludes others not expressed, to read subsection (g) to preclude impliedly the denial of indemnification in other circumstances. That is, asserting to apply the canon here, the commenter would interpret the law to mean that because subsection (g) explicitly prohibits the *Enterprises* from indemnifying for third tier civil money penalties, it impliedly also prohibits *OFHEO* from denying indemnification in other proceedings. Such an interpretation goes beyond the logical application of the canon, is inconsistent with the limited use of the canon by the

[18] For example, OFHEO examiners assess whether board members are able to devote sufficient, well-organized time to carry out their responsibilities, which is evaluated by, among other criteria, how many other boards the individual Enterprise board members sit on simultaneously. EG–98–01 at 29. Furthermore, formal and informal administrative enforcement actions against individual board members are supervisory tools available to OFHEO as authorized by Congress.

[19] The proposed indemnification sections were drawn from elements founded in the indemnification regulations of the bank regulatory agencies.

[20] 12 U.S.C. 4636(g).

[21] 12 U.S.C. 4636(b)(3).

[22] The authority of OFHEO to preclude indemnification of a wrongdoer in connection with an administrative enforcement proceeding by the agency flows from its statutory enforcement and supervisory authorities to ensure the safe and sound operations of the Enterprises and to issue regulations in furtherance of the responsibilities of the agency. OFHEO previously has issued rules of practice and procedure that recount the enforcement powers and their legal foundations that set forth the procedures for the exercise thereof. 12 CFR part 1780.

Under the statutory and regulatory enforcement scheme, OFHEO is afforded broad enforcement powers by Congress to fashion remedies deemed appropriate to the circumstances against board members and executive officers, as well as an Enterprise, including permanent and temporary cease-and-desist orders, sections 1371 and 1372 of the Act (12 U.S.C. 4631 and 4632, respectively) and civil money penalties, section 1376 of the Act (12 U.S.C. 4636). With respect to civil money penalties, which are the narrow focus of the comments from Fannie Mae, the Director may impose such penalties against an Enterprise, board member, or executive officer who (1) violates a provision of the Act, the chartering acts, or any order, rule, or regulation under the Act (with certain exceptions); (2) violates a final or temporary cease-and-desist order; (3) violates a written agreement between the Enterprise and OFHEO or (4) engages in conduct that causes or is likely to cause a loss to the Enterprise. (Section 1376(a) of the Act; 12 U.S.C. 4636(a)) The amounts of the civil money penalties are denominated ''tiers.'' The first tier civil money penalty amount is applicable under the terms of the Act to the Enterprises only.

With respect to executive officers and board members, second tier civil money penalties may be imposed in an amount not to exceed $10,000 for each day that a violation or conduct continues, if the Director finds that the violation or conduct is a part of a pattern of misconduct; or involved recklessness and caused or would be likely to cause a material loss to the Enterprise. Third tier civil money penalties may be imposed on such persons in an amount not to exceed $100,000 for each day that a violation or conduct described above continues, if the Director finds that the violation or conduct was knowing and caused or would be likely to cause a substantial loss to the Enterprise. (Section 1376(b) of the Act; 12 U.S.C. 4636(b)). In subsection (g), Congress fashioned an absolute bar that ''[a]n enterprise may not reimburse or indemnify any individual for any penalty imposed under subsection (b)(3) [third tier civil money penalty].''

[23] *See Mourning v. Family Publications Service, Inc.,* 411 U.S. 356, 375 (1973) (Every section of an act establishing a broad regulatory scheme need not be construed as a penal provision merely because a few sections of the act provide for civil and criminal penalties.)

[24] *See* Norman J. Singer, Statutes and Statutory Construction § 59:8 (6th ed. 2001).

courts, and is inappropriate in the context at hand.[25] Indeed, the courts have recognized ''an equally pertinent canon of interpretation'' that:

[A] congressional decision to prohibit certain activities does *not* imply an intent to disable the relevant administrative body from taking similar action with respect to activities that pose a similar danger. * * * Indeed, a congressional prohibition of particular conduct may actually *support* the view that the administrative entity can exercise its authority to eliminate a similar danger.[26]

Further, OFHEO remains cognizant of the canon of statutory construction known as the ''whole statute'' interpretation.[27] Because a statute is passed as a whole and not in parts or sections, this canon requires that each section should be construed in connection with every other part or section so as to produce a harmonious whole.[28] Statutes must be construed to further the statutory scheme; ''a statutory subsection may not be considered in a vacuum.'' [29] Here, the Director is broadly empowered under various sections of the Act to fashion appropriate sanctions and remedies to address varying circumstances of misconduct, such as that resulting from recklessness or fraud, by corporate officials, including officers and directors of an Enterprise. This occurs without regard to other provisions of the Act that curtail the authority of an Enterprise to indemnify such persons in certain extraordinary circumstances.

The commenters also asserted that its restrictive interpretation of subsection (g) is supported by the argument that if Congress had wanted to prohibit indemnification for second tier civil money penalties, it knew how to do so in light of congressional amendment of section 18(k) of the Federal Deposit Insurance Act (FDI Act).[30] More particularly, that law explicitly authorizes the Federal Deposit Insurance Corporation to prohibit indemnification payments to institution-affiliated parties, including board members and executive officers of federally insured banks and thrifts, for penalties and related legal expenses in view of such factors as the agency spells out by regulation. But Congress did not address indemnification in the Act affecting the Enterprises in the same manner as it did for insured banks and thrift institutions under the FDI Act. Logic supports the position that the different statutory formulations of the Act and the FDI Act evidence that Congress knew how to prohibit expressly OFHEO from denying indemnification, but did not do so.

OFHEO rejects the assertion that it has no authority beyond subsection (g) to address indemnification. In order to minimize misunderstanding and to clarify the authority of the agency to fashion appropriate remedies on a case-by-case basis, proposed §§ 1710.30 and 1710.31 have been revised and renumbered as § 1710.20 to require each Enterprise to adopt written policies and procedures concerning indemnification and to recount the authority of OFHEO to fashion appropriate remedies, including indemnification pursuant to its inchoate enforcement authority under various sections of the Act as set forth at 12 CFR part 1780.

Under § 1710.20, the body of law elected by an Enterprise pursuant to § 1710.10 will provide the basis for indemnification by the Enterprise. The Enterprises are authorized to operate under the indemnification requirements set forth by the elected body of State law or the RMBCA. The revisions to the indemnification provision are designed to preclude any misunderstanding as to the applicability of State law or RMBCA provisions that may mandate or provide for indemnification in certain circumstances. Thus, the revised indemnification provisions should not detract from the efforts of the Enterprises to continue to attract and retain qualified board members and executive officers.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The final regulation is not classified as an economically significant rule under Executive Order 12866 because it would not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required. The final regulation was reviewed by the Office of Management and Budget under other provisions of Executive Order 12866.

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of Government. The Enterprises are federally chartered corporations supervised by OFHEO. The final regulation sets forth minimum corporate governance standards with which the Enterprises must comply for Federal supervisory purposes. The final regulation requires that each Enterprise elect a body of State corporate law or the Revised Model Corporation Act to follow in terms of its corporate practices and procedures. The final regulation does not affect in any manner the powers and authorities of any State with respect to the Enterprises or alter the distribution of power and responsibilities between State and Federal levels of government. Therefore, OFHEO has determined that the final regulation has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a

[25] *See, e.g., Herman & MacLean v. Huddleston,* 459 U.S. 375, 387 (1983); *U.S. Dept. of Labor v. Bethlehem Mines, et al.,* 669 F.2d 187, 197 (4th Cir. 1982); *Mobile Communications Corp. of America v. FCC,* 77 F.3d 1399, 1404 (D.D.C. 1996); *Texas Rural Legal Aid, Inc. v. Legal Services Corporation,* 940 F.2d 685, 694 (D.D.C. 1991); *Cheney Railroad Co., Inc. v. ICC,* 902 F.2d 66, 69 (D.D.C. 1990); *National Petroleum Refiners Ass'n v. FTC,* 482 F.2d 672, 676 (D.D.C. 1973). Its application also is inappropriate when, as here, a nonexclusive reading better serves the purposes for which the statute was enacted or allows the exercise of incidental authority necessary to an expressed power or right. *Bailey v. Federal Intermediate Credit Bank of St. Louis,* 788 F.2d 498, 500 (8th Cir. 1986) *cert. denied,* 479 U.S. 915 (1986).

[26] *Texas Rural Legal Aid, Inc.,* at 694 (emphasis in original, citations omitted). Thus, the congressional decision to prohibit the Enterprises from indemnifying board members and executive officers in connection with third tier civil money penalties does not imply congressional intent to disable OFHEO from prohibiting indemnification in connection with other agency actions.

[27] *See* Singer, *supra* note 24, at § 46:05.

[28] *Id.*

[29] *Id.* and *FDA* v. *Brown & Williamson Tobacco Corp., et al.,* 529 U.S. 120, 132–133 (2000) (''It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.' A court must therefore interpret the statute 'as a symmetrical and coherent regulatory scheme.' '' [citations omitted]). The authority of OFHEO in connection with administrative enforcement proceedings is derived from its statutory enforcement and supervisory responsibilities. It would be wholly inconsistent with the congressional scheme to read subsection (g) so as to constrain the essential flexibility of OFHEO to fashion differing remedies to address particular circumstances.

[30] 30 12 U.S.C. 1828(k).

regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the final regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the final regulation, if adopted, is not likely to have a significant economic impact on a substantial number of small business entities because it is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1710

Administrative practice and procedure, Government Sponsored Enterprises.

Accordingly, for the reasons stated in the preamble, OFHEO adds part 1710 to subchapter C of 12 CFR chapter XXVII to read as follows:

PART 1710—CORPORATE GOVERNANCE

Subpart A—General

Sec.

1710.1 Purpose.
1710.2 Definitions.
1710.3—1710.9 [Reserved]

Subpart B—Corporate Practices and Procedures

1710.10 Law applicable to corporate governance.
1710.11 Committees of board of directors.
1710.12 Compensation of board members, executive officers, and employees.
1710.13 Quorum of board of directors; proxies not permissible.
1710.14 Conflict-of-interest standards.
1710.15 Conduct and responsibilities of board of directors.
1710.16–1710.19 [Reserved]

Subpart C—Indemnification

1710.20 Indemnification.

Authority: 12 U.S.C. 4513(a) and 4513(b)(1).

Subpart A—General

§ 1710.1 Purpose.

OFHEO is responsible under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4501 *et seq.*, for ensuring the safety and soundness of the Enterprises. In furtherance of that responsibility, this part sets forth minimum standards with respect to the corporate governance practices and procedures of the Enterprises.

§ 1710.2 Definitions.

For purposes of this part, the term:

(a) *Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, section 1301, Oct. 28, 1992, 106 Stat. 3672, 3941 through 4012 (1993) (12 U.S.C. 4501 *et seq.*).

(b) *Board member* means a member of the board of directors.

(c) *Board of directors* means the board of directors of an Enterprise.

(d) *Chartering acts* mean the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act, which are codified at 12 U.S.C. 1716 through 1723i and 12 U.S.C. 1451 through 1459, respectively.

(e) *Compensation* means any payment of money or the provision of any other thing of current or potential value in connection with employment. The term ''compensation'' includes all direct and indirect payments of benefits, both cash and non-cash, including, but not limited to, payments and benefits derived from compensation or benefit agreements, fee arrangements, perquisites, stock option plans, post employment benefits, or other compensatory arrangements.

(f) *Director* means the Director of OFHEO or his or her designee.

(g) *Employee* means a salaried individual, other than an executive officer, who works part-time, full-time, or temporarily for an Enterprise.

(h) *Enterprise* means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and the term ''Enterprises'' means, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(i) *Executive officer* means any senior executive officer and any senior vice president of an Enterprise and any individual with similar responsibilities, without regard to title, who is in charge of a principal business unit, division, or function of an Enterprise, or who reports directly to the chairperson, vice chairperson, chief operating officer, or president of an Enterprise.

(j) *NYSE* means the New York Stock Exchange.

(k) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

(l) *Senior executive officer* means the chairperson of the board of directors, chief executive officer, chief financial officer, chief operating officer, president, vice chairperson, any executive vice president of an Enterprise, and any individual, without regard to title, who has similar responsibilities.

§§ 1710.3—1710.9 [Reserved]

Subpart B—Corporate Practices and Procedures

§ 1710.10 Law applicable to corporate governance.

(a) *General.* The corporate governance practices and procedures of each Enterprise shall comply with applicable chartering acts and other Federal law, rules, and regulations, and shall be consistent with the safe and sound operations of the Enterprise.

(b) *Election and designation of body of law.* (1) To the extent not inconsistent with paragraph (a) of this section, each Enterprise shall follow the corporate governance practices and procedures of the law of the jurisdiction in which the principal office of the Enterprise is located, as amended; Delaware General Corporation Law, Del. Code Ann. tit. 8, as amended; or the Revised Model Business Corporation Act, as amended.

(2) Each Enterprise shall designate in its bylaws the body of law elected for its corporate governance practices and procedures pursuant to this paragraph within 90 calendar days from August 5, 2002.

§ 1710.11 Committees of board of directors.

(a) *General.* The board of directors may rely, in directing the Enterprise, on reports from committees of the board of directors, provided, however, that no committee of the board of directors shall have the authority of the board of directors to amend the bylaws and no committee shall operate to relieve the board of directors or any board member of a responsibility imposed by applicable law, rule, or regulation.

(b) *Audit and compensation committees.* Each Enterprise shall provide in its bylaws, within 90 calendar days from August 5, 2002, for the establishment of, however styled:

(1) An audit committee that is in compliance with the charter, independence, composition, expertise, and other requirements of the audit committee rules of the NYSE, as from time to time amended, unless otherwise provided by OFHEO; and

(2) A compensation committee, the membership of which is to include at least three independent board members and the duties of which include, at a minimum, oversight of compensation policies and plans for executive officers and employees and approving the

compensation of senior executive officers.

§ 1710.12 Compensation of board members, executive officers, and employees.

Compensation of board members, executive officers, and employees shall not be in excess of that which is reasonable and commensurate with their duties and responsibilities and comply with applicable laws, rules, and regulations.

§ 1710.13 Quorum of board of directors; proxies not permissible.

Each Enterprise shall provide in its bylaws, within 90 calendar days from August 5, 2002, that, for the transaction of business, a quorum of the board of directors is at least a majority of the entire board of directors and that a board member may not vote by proxy.

§ 1710.14 Conflict-of-interest standards.

Each Enterprise shall establish and administer written conflict-of-interest standards that are reasonably designed to assure the ability of board members, executive officers, and employees of the Enterprise to discharge their duties and responsibilities, on behalf of the Enterprise, in an objective and impartial manner.

§ 1710.15 Conduct and responsibilities of board of directors.

(a) *Purpose.* The purpose of this section, and of this subpart, is to set forth minimum standards of the conduct and responsibilities of the board of directors in furtherance of the safe and sound operations of each Enterprise. The provisions of this section neither provide shareholders of an Enterprise with additional rights nor impose liability on any board member under State law.

(b) *Conduct and responsibilities.* The board of directors is responsible for directing the conduct and affairs of the Enterprise in furtherance of the safe and sound operation of the Enterprise and must remain reasonably informed of the condition, activities, and operations of the Enterprise. The responsibilities of the board of directors include having in place adequate policies and procedures to assure its oversight of, among other matters, the following:

(1) Corporate strategy, major plans of action, risk policy, and corporate performance;

(2) Hiring and retention of qualified senior executive officers and succession planning for such senior executive officers;

(3) Compensation programs of the Enterprise;

(4) Integrity of accounting and financial reporting systems of the Enterprise, including independent audits and systems of internal control;

(5) Process and adequacy of reporting, disclosures, and communications to shareholders, investors, and potential investors; and

(6) Responsiveness of executive officers in providing accurate and timely reports to Federal regulators and in addressing the supervisory concerns of Federal regulators in a timely and appropriate manner.

(c) *Guidance.* The board of directors should refer to the body of law elected under § 1710.10 and to publications and other pronouncements of OFHEO for additional guidance on conduct and responsibilities of the board of directors.

§§ 1710.16–1710.19 [Reserved]

Subpart C—Indemnification

§ 1710.20 Indemnification.

(a) *Safety and soundness authority.* OFHEO has the authority, under the Act, to prohibit or restrict reimbursement or indemnification of any current or former board member or any current or former executive officer by an Enterprise or by any affiliate of an Enterprise in furtherance of the safe and sound operations of the Enterprise.

(b) *Policies and procedures.* Each Enterprise shall have in place policies and procedures consistent with this part for indemnification, including the approval or denial by the board of directors of indemnification of current and former board members and current or former executive officers. Such policies and procedures should address, among other matters, standards relating to indemnification, investigation by the board of directors, and review by independent counsel.

Dated: May 30, 2002.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 02–13917 Filed 6–3–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–10–AD; Amendment 39–12764; AD 2002–11–03]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–502, AT–502A, AT–502B, and AT–503A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Air Tractor, Inc. (Air Tractor) Models AT–502, AT–502A, AT–502B, and AT–503A airplanes. This AD lowers the safe life for the wing lower spar cap established in AD 2001–10–04 R1 and further reduces the safe life for airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets. This AD also requires you to eddy-current inspect the wing lower spar cap immediately prior to the replacement/modification to detect and correct any crack in a bolthole before it extends to the modified center section of the wing and report the results of this inspection to the Federal Aviation Administration (FAA). This AD is the result of 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 times lower than the established safe life. 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 June 14, 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).

The FAA must receive any comments on this rule on or before July 5, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–10–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday

through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–10–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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 FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–10–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 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

For 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

What Events Have Caused This AD?

On December 17, 2001, FAA 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 for the wing lower spar cap and require you to eddy-current inspect the wing lower spar cap immediately prior to the replacement/modification 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 those AT–400 and AT–500 series airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets.

Since issuance of that NPRM, 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.

What Are the Consequences if the Condition Is Not Corrected?

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.

The FAA's Determination and an Explanation of the Provisions of This AD

What Has FAA Decided?

The FAA has reviewed all available information and determined that:

—The unsafe condition referenced in this document exists or could develop on other Air Tractor Models AT–502, AT–502A, AT–502B, and AT–503A airplanes of the same type design;

—The safe life on these airplanes should be further reduced;

—These airplanes should be removed from the previous NPRM; and

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

What Does This AD Require?

This AD:

—Lowers the safe life for the wing lower spar cap established in AD 2001–10–04 R1;

—Further reduces the safe life for the Models AT–502, AT–502A, AT–502B, and AT–503A airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets;

—Requires you to eddy-current inspect the wing lower spar cap immediately prior to the replacement/modification to detect and correct any crack in a bolthole before it extends to the modified center section of the wing; and

—Requires you to report the results of this inspection to the FAA.

You must accomplish these actions in accordance with Snow Engineering Service Letter #197 or #205, both Revised March 26, 2001, as applicable.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We have included, in the rulemaking docket, a discussion of information that may have influenced this action.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in the wing separating from the airplane during flight, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the AD I Should Pay Attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–10–AD.'' We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations 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, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–11–03 Air Tractor, Inc.: Amendment 39–12764; Docket No. 2002–CE–10–AD.

(a) *What airplanes are affected by this AD?* This AD applies to certain Models AT–502, AT–502A, AT–502B, and AT-503A airplanes. Use paragraph (a)(1) of this AD for airplanes that do not incorporate and never have incorporated winglets. Use paragraph (a)(3) of this AD for certain AT–500 series 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 Nos.	Safe life
AT–502	0003 through 0236	2,050 hours TIS.
AT–502A	0158 through 0618	1,650 hours TIS.
AT–502B	0187 through 0618	2,050 hours TIS.
AT–503A	All serial numbers beginning with 0067	2,050 hours TIS

(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 below, 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 Nos.	Winglet usage factor
AT–502	0003 through 0236	1.6
AT–502A	0158 through 0238	1.6
AT–502A	0239 through 0618	1.2
AT–502B	0187 through 0618	1.2

(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.

(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 *COM001*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) Incorporate the following into the Aircraft Logbook ''In accordance with AD 2002–11–03, 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) of this AD and the Appendix to this AD) (ii) If, as of the time of the logbook entry requirement of paragraph (d)(1)(i) of this AD, your airplane modification is over or within 50 hours of the safe life, an additional 50 hours TIS is allowed to accomplish the replacement/modification	Accomplish the logbook entry within the next 10 hours TIS after June 14, 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 AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). Accomplish the actual replacement/modification in accordance with Snow Engineering Service Letter #197 or #205, 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 is met.	In accordance with the procedures in Snow Engineering Service Letter #197 or #205, 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. 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 June 14, 2002 (the effective date of this AD), unless already accomplished (have the mechanic who accomplished the work mark the logbooks accordingly).	In accordance with the procedures in Snow Engineering Service Letter #197 or #205, both Revised March 26, 2001, as applicable.

Actions	Compliance	Procedures
(4) Report to FAA the results of each inspection required by paragraph (d)(3) of this AD. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056	Within 10 days after the inspection required in paragraph (d)(3) of this AD or within 10 days after June 14, 2002 (the effective date of this AD, whichever occurs later.	Submit the form (Figure 1 of this AD) to FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960.

BILLING CODE 4910–13–P

AD 2002-11-03 INSPECTION REPORT	
1. Inspection Performed By:	2. Phone:
3. Aircraft Model:	4. Aircraft Serial Number:
5. Engine Model Number:	6. Aircraft Total TIS:
7. Wing Total TIS:	8. Lower Spar Cap TIS:
9. Has the lower spar cap been inspected before? (Eddy-current, Dye penetrant, magnetic particle, ultrasound) ☐ Yes ☐ No	9a. If yes, Date: _____ Inspection Method: _____ Lower Spar Cap TIS: _____ Cracks found? ☐ Yes ☐ No
10. Has there been any major repair or alteration performed to the spar cap? ☐ Yes ☐ No	10a. If yes, specify (Description and TIS)
11. Date of AD inspection: _____	
12. Inspection Results: NOTE: Indicate even if no cracks are found.	12a. ☐ Left Hand ☐ Right Hand
12b. Crack Length: _____	12c. Does drilling hole to next larger size remove all traces of the crack(s)? ☐ Yes ☐ No
12d. Corrective Action Taken:	

Figure 1 of paragraph (d)(4) of this AD

BILLING CODE 4910–13–C

(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: 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 50 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 50 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 #197 or #205, 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 #197 or #205, 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 may view copies at 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) *When does this amendment become effective?* This amendment becomes effective on June 14, 2002.

APPENDIX TO AD 2002–11–03

The following provides procedures for determining the safe life for Models AT–502, AT–502A, and AT–502B 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–502B, serial number 0292. From paragraph (a)(1) of this AD, the safe life of your airplane is 2,050 hours TIS.

All examples from hereon will be based on the Model AT–502B, serial number 0292 airplane.

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

Example: Again, your airplane is a Model AT–502B, serial number 0292. From paragraph (a)(3) of this AD, your winglet usage factor is 1.2.

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 1.2. The adjusted winglet TIS is 600 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:

$$\text{Adjusted winglet TIS} - \text{the winglet TIS} = \text{winglet usage penalty.}$$

$$(600 \text{ hours}) - (500 \text{ hours TIS}) = (100 \text{ hours TIS}).$$

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:

$$\text{Unmodified safe life} - \text{winglet usage penalty} = \text{adjusted safe life.}$$

$$(2{,}050 \text{ hours TIS}) - (100 \text{ hours TIS}) = (1{,}950 \text{ hours TIS}).$$

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)(i) 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–502B, serial number 0292. From paragraph (a)(1) of this AD, the safe life of your airplane is 2,050 hours TIS.

All examples from hereon will be based on the Model AT–502B, serial number 0292 airplane.

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

Example: Again, your airplane is a Model AT–502B, serial number 0292. From paragraph (a)(3) of this AD, your winglet usage factor is 1.2.

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:

$$\text{Unmodified safe life} - \text{TIS without winglets} = \text{Potential winglet TIS.}$$
$$(2{,}050 \text{ hours TIS}) - (1{,}000 \text{ hours TIS}) = (1{,}050 \text{ hours TIS}).$$

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:

$$\text{Potential winglet TIS} \div \text{Winglet usage factor} = \text{Adjusted potential winglet TIS.}$$
$$(1{,}050 \text{ hours TIS}) \div (1.2) = (875 \text{ hours TIS}).$$

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:

$$\text{Potential winglet TIS} - \text{Adjusted potential winglet TIS} = \text{Winglet usage penalty.}$$
$$(1{,}050 \text{ hours TIS}) - (875 \text{ hours TIS}) = (175 \text{ hours TIS}).$$

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 (result of Step 2 above).

Example:

$$\text{Unmodified safe life} - \text{Winglet usage penalty} = \text{Adjusted safe life.}$$
$$(2{,}050 \text{ hours TIS}) - (175 \text{ hours TIS}) = (1{,}875 \text{ hours TIS}).$$

8. Enter the adjusted safe life (result of Step 7 above) in paragraph (d)(1)(i) 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 22, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–13423 Filed 6–3–02; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 40

Fees for Product Review and Approval

AGENCY: Commodity Futures Trading Commission.

ACTION: Annual update of schedule of fees for product review and approval.

SUMMARY: The Commission charges fees to designated contract markets and registered derivatives transaction execution facilities to recover the costs of its review of requests for product review and approval. The calculation of the fee amounts to be charged for the upcoming year is based on an average of actual program costs incurred in the most recent three full fiscal years, as explained below. The new fee schedule is set forth below.

EFFECTIVE DATE: June 4, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Shilts, Acting Director, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5260.

SUPPLEMENTARY INFORMATION:

I. Summary of Fees

Fees Charged for Processing Requests for Product Review and Approval

Single Applications

- A single futures contract or an option on a physical—$5,000;
- A single option on a previously-approved futures contract—$1,000;

• A combined submission of a futures contract and an option on the same futures contract—$5,500.

Multiple Applications

For multiple contract filings containing related contracts, the product review and approval fees are:

• A submission of multiple related futures contracts—$5,000 for the first contract, plus $500 for each additional contract;

• A submission of multiple related options on futures contracts—$1,000 for the first contract, plus $100 for each additional contract;

• A combined submission of multiple futures contracts and options on those futures contracts—$5,500 for the first combined futures and option contract, plus $550 for each additional futures and option contract.

II. Background Information

1. General

The Commission recalculates each year the fees it charges with the intention of recovering the costs of operating certain programs.[1] All costs are accounted for by the Commission's Management Accounting Structure Codes (MASC) system operated according to a government-wide standard established by the Office of Management and Budget. The fees are set each year based on direct program costs, plus an overhead factor.

2. Overhead Rate

The fees charged by the Commission are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs consist generally of the following Commission-wide costs: indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 105 percent for fiscal year 1999, 117 percent for fiscal year 2000, and 105 percent for fiscal year 2001. These overhead rates are applied to the direct labor costs to calculate the costs of reviewing contract approval requests.

3. Processing requests for contract approval

Calculations of the fees for processing requests for product review and approval have become more refined over the years as the types of contracts being reviewed have changed.

On August 23, 1983, the Commission established a fee for Contract Market Designation (48 FR 38214). Prior to its recent amendment, the Commodity Exchange Act (Act) provided for ''designation'' of each new contract as a ''contract market.'' The Commodity Futures Modernization Act (CFMA) amended the Act to limit the concept of ''contract market designation'' to the approval of certain markets or trading facilities on which futures and options are traded, as opposed to approval of a specific contract or product. Commission rules that implemented the CFMA, therefore, charged a fee for the contract review where approval has been requested by a designated contract market or registered derivatives transaction execution facility (DTF). No fee is charged a board of trade for its initial designation as a contract market or registration as a DTF.

The fee, as originally adopted in 1983, was based on a three-year moving average of the actual costs expended and the number of contracts reviewed by the Commission during that period. The formula for determining the fee was revised in 1985. At that time, most designation applications were for futures contracts and no separate fee was set for option contracts.

In 1992, the Commission reviewed its data on the actual costs for reviewing applications for both futures and option contracts and determined that the percentage-of applications pertaining to options had increased and that the cost of reviewing a futures contract designation application was much higher than the cost of reviewing an application for an option contract. The Commission also determined that when applications for a futures contract and an option on that futures contract are submitted simultaneously, the cost is much lower than when the contracts are separately reviewed. 'To recognize this cost difference, three separate fees were established: one for futures; one for options; and one for combined futures and option contract applications (57 FR 1372, Jan. 14, 1992).

The Commission refined its fee structure further in 1999 to recognize the unique processing cost characteristics of a class of contracts—cash-settled based on an index of non-tangible commodities (64 FR 30384, June 8, 1999). The Commission determined to charge a reduced fee for related simultaneously submitted contracts for which the terms and conditions of all contracts in the filing are identical, except in regard to a specified temporal or spatial pricing characteristic or the multiplier used to determine the size of each contract. Contracts on major currencies, defined as the Australian dollar, British pound, Euro (and its component currencies), Japanese yen, Canadian dollars Swiss franc, New Zealand dollar, Swedish krona, and the Norwegian krone (including contracts based on currency cross rates), were determined to be eligible for the reduced multiple contract fees.[2] The Commission determined that a 10 percent marginal fee for additional contracts in a filing would be appropriate for simultaneously submitted contracts eligible for the multiple contract filing fee.

Commission staff compiled the actual costs of processing a request for product review and contract approval for a futures contract for fiscal years 1999, 2000, and 2001, and found that the average cost over the three-year period was $5,000, including overhead. Review of actual costs of processing contract-approval reviews for an option contract for fiscal years 1999, 2000, and 2001 reveal that the average cost over the period was $1,000 per contract, including overhead.

In accordance with its regulations as codified at 17 CFR part 40 appendix B, the Commission has determined that the fee for approval of a futures contract will be set at $5,000 and the fee for approval of an option contract will be set at $1,000. The fee for simultaneously submitted futures contracts and option contracts on those futures contracts and the fees for filings containing multiple cash-settled indices on non-tangible commodities have been set similarly and as indicated in the schedule set forth in the *Summary of Fee* above.

III. Cost-Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMR, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. Section

[1] *See* Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a and 31 U.S.C. 9701. For a broader discussion of the history of Commission fees, *see* 52 FR 46070 (Dec. 4, 1987).

[2] Submissions containing a number of similar cash-settled contracts based on the government debt of different foreign countries would not be eligible for the reduced fee, since the manipulation potential of each contract would be related to the liquidity of the underlying instruments, and the individual trading practices and governmental oversight in each specific country require separate analysis.

15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15 simply requires the Commission to ''consider the costs and benefits'' of its action, in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effective any of the provisions or to accomplish any of the purposes of the Act.

The submission of new products for Commission review and approved by designated contract markets or DTFs is voluntary. The Commission has therefore concluded that those entities choosing to make such submissions find that the benefits of doing so equal or exceed the fees, which, as explained above, are derived from the Commission's actual processing costs.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 USC 601, *et seq.*, requires agencies to consider the impact of rules on small business. The fees implemented in this release affect contract markets and registered DTFs. The Commission has previously determined that contract markets and registered DTFs are not ''small entities'' for purposes of the Regulatory Flexibility Act. Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to 5 USC 605(b), that the fees implemented here will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC, on May 29, 2002 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–13861 Filed 6–3–02; 8:45 am]

BILLING CODE 6351–01–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960–AF53

Collection of Supplemental Security Income Overpayments From Special Benefits for Certain World War II Veterans

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising our regulations to permit the Social Security Administration (SSA) to recover Supplemental Security Income (SSI) overpayments under title XVI of the Social Security Act (the Act) by adjusting the amount of Special Benefits for Certain World War II Veterans (SVB) payable under title VIII of the Act. This collection practice is limited to individuals who are not currently eligible to receive any cash payments under any provision of title XVI or any State supplementary payments that we administer. Also, the amount of SVB to be withheld in a month to recover the SSI overpayment will not exceed 10 percent unless the overpaid person requests us to withhold a different amount or the overpaid person (or his or her spouse) willfully misrepresented or concealed material information in connection with the SSI overpayment. If there was willful misrepresentation or concealment, the entire SVB amount will be withheld to recover the SSI overpayment. These revisions will permit SSA to recover SSI overpayments from SVB payable to the overpaid individual when SSI cash benefits are not payable.

EFFECTIVE DATE: These rules are effective on July 5, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia Hora, Social Insurance Specialist, Office of Process and Innovation Management, 2109 West Low Rise Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, *regulations@ssa.gov,* (410) 965–7183 or TTY (410) 966–5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet web site, SSA Online, at *http://www.ssa.gov.*

Electronic Version

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SUPPLEMENTARY INFORMATION: On December 14, 1999, Pub. L. 106–169, the ''Foster Care Independence Act of 1999'' was enacted. Section 251(a) of Pub. L. 106–169 added title VIII to the Social Security Act, establishing a new benefit program—Special Benefits for Certain World War II Veterans. Under this program, if you are a World War II veteran who was eligible for SSI for December 1999 and for the month of application for SVB, and who meets other criteria specified in the law, you may be entitled to SVB for each month in which you reside outside the United States.

Section 251(b) of Pub. L. 106–169 amended section 1147 of the Act. Prior to the enactment of Pub. L. 106–169, section 1147 of the Act (added by section 8 of Pub. L. 105–306) allowed SSA to recover SSI overpayments from you, if you were no longer receiving SSI cash payments, by reducing the amount of any benefits payable to you under title II of the Act. Final regulations on recovery of SSI overpayments from title II benefits were published on July 26, 2001, at 66 FR 38902. Section 251(b) of Pub. L. 106–169 amended section 1147 to allow recovery of SSI overpayments from title VIII benefits, as well as title II benefits, payable in a month. Throughout this preamble, this type of overpayment recovery is called ''cross-program recovery.'' With certain exceptions, the amount of the reduction permitted under cross-program recovery cannot exceed 10 percent of the benefits payable in a month.

On July 26, 2001 we published a Notice of Proposed Rulemaking in the **Federal Register** at 66 FR 38963 and provided a 60-day period for interested individuals and organizations to comment on the proposed rules. We received one public comment from an individual. A summary of the comment and our response to it follows.

Comment: The commenter believes we should not reduce an individual's SVB payments to recover an SSI overpayment unless there was willful concealment or misrepresentation on the part of the overpaid person. The commenter points out that the overpaid individual is an aged veteran who may not even understand why the overpayment occurred. The commenter argues that, rather than holding the veteran liable, we should make stronger efforts to eliminate payment errors within SSA.

Response: We are not adopting this comment. As indicated above, Congress specifically amended section 1147 of the Act to give SSA authority to use cross-program recovery to recover SSI overpayments from SVB payments. In recognition of the fact that the veteran is an elderly former SSI recipient, Congress limited to 10 percent the amount we may withhold from an individual's monthly SVB payment to recover an SSI overpayment. In addition, in the cross-program recovery notice that we will send to an overpaid individual, we will explain that he/she has both the right to request that we waive recovery of the overpayment and the right to request that we use a rate of withholding that is less than 10 percent of the monthly payment amount. We will waive recovery of an SSI overpayment in any case where the individual was without fault in causing the overpayment and recovery would either defeat the purpose of title XVI (i.e., deprive the individual of income or resources needed for ordinary and necessary living expenses) or be against equity and good conscience (e.g., the overpaid individual changed his or her position for the worse or relinquished a valuable right in reliance on the overpayment). We believe the final rules strike the proper balance between protecting the rights of the overpaid individual and satisfying our obligation to ensure the fiscal integrity of the SSI program.

Regarding payment errors within SSA, we are pursuing several initiatives that address the causes of overpayments in the benefit programs we administer. We are hopeful that these initiatives will help to reduce the number of overpayments that occur.

We are publishing these final rules with only minor changes from the proposed rule.

Explanation of Changes

In order to implement cross-program recovery from SVB, we are modifying several provisions of § 416.572. Paragraph (a) is revised as follows:

- We are revising the definition of ''cross-program recovery'' to include the process of collecting title XVI overpayments from SVB payable to you in a month.
- We are revising the definition of ''benefits payable in a month'' to include the amount of SVB you would actually receive in a given month. Under this definition, ''benefits payable in a month'' includes the monthly SVB amount and any past due SVB you receive, after any reduction by the amount of income for the month as required by section 805 of the Act (42 U.S.C. 1005). We have added to the definition an example to show how we determine SVB payable in a month.
- We changed the language of paragraph (a)(3), as published with the notice of proposed rulemaking, to conform it to the language of the final regulation published at 66 FR 38902, 38907.

We are revising paragraph (b) of § 416.572 to explain that we may use cross-program recovery to collect title XVI overpayments if you are not currently receiving SSI cash benefits and are receiving benefits under title II or title VIII of the Act. Therefore, if your title II and/or title VIII benefits are being adjusted to recover a title XVI overpayment and you again become eligible for SSI benefits, cross-program recovery will end with the month in which SSI cash benefits resume. We will begin collecting the remaining title XVI overpayment by monthly adjustment of SSI payments. We are also revising paragraph (b) to explain that:

- We will not start cross-program recovery from SVB if we already are adjusting SVB to recover an SVB overpayment, and
- We will not start cross-program recovery from title II benefits if we are already adjusting title II benefits to recover an SVB or title II overpayment.

Adjustment of title VIII and title II benefits to recover SVB overpayments is authorized by section 808(a)(1) of the Act (42 U.S.C. 1008(a)(1)).

Paragraph (c) of § 416.572 lists the information that we include in the notice sent to a person whose benefits are subject to cross-program recovery. We are revising paragraph (c)(2) to add that the information will include the amount we will withhold from SVB payable in a month. The notice will state that you may ask us to review our determination that you still owe the overpayment balance and that you may ask us to waive collection of the overpayment balance. The notice will inform you how to request a waiver. Unless you or your spouse willfully misrepresented or concealed material information in connection with the overpayment, the notice also will state that you may request that we withhold from SVB a different amount than the amount stated in the notice.

Paragraph (d) of § 416.572 currently explains that we will begin to withhold no sooner than 30 days after the date of the notice. If you pay the entire overpayment balance within that 30-day period, we will not impose cross-program recovery. If within the 30-day period you ask us to review the determination that you still owe us the overpayment balance and/or request us to waive recovery of the overpayment balance, we will not begin cross-program recovery until we review the matter(s) and notify you of our decision(s). If within the 30-day period, you request that we withhold a different amount, we will not begin cross-program recovery until we determine the amount we will withhold. These provisions apply when we pursue cross-program recovery to collect SSI overpayments from SVB payable under title VIII of the Act. No revisions to the regulatory text are needed.

We are revising paragraph (e) of § 416.572 to explain that when cross-program recovery is applied, we will collect the overpayment at a rate of 10 percent of the title II benefits and SVB payable in any month, respectively. However, we will collect at a rate of 100 percent of the title II benefits and SVB payable in any month if you (or your spouse) willfully misrepresented or concealed material information in connection with the overpayment.

Other Revisions

We are revising the language of § 416.570 to state that we will not adjust title XVI benefits to recover SVB overpayments without a specific request from the SSI beneficiary. Without the consent of the overpaid person, we have no authority to recover SVB overpayments from SSI payments.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final regulations meet the criteria for a significant regulatory action under Executive Order (E.O.) 12866. Thus, the regulations were reviewed by OMB. However, the estimated amounts of the savings or costs involved do not cross the threshold for an economically significant regulation as defined in E.O. 12866. The estimated program savings from increased collections as a result of implementation of section 251(b)(7) of Pub. L. 106–169 are negligible, less than $2.5 million over the next 10 years. The administrative impact is also negligible.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules contain reporting requirements at sections 416.570 and

416.572(e). The public reporting burden is accounted for in the Information Collection Requests for the forms that the public uses to submit the information to SSA. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirements contained in these rules. We are seeking clearance of the burden referenced in these rules because the rules were not considered during the clearance of the forms. An Information Collection Request has been submitted to OMB. While these rules will be effective 30 days from publication, these burdens will not be effective until cleared by OMB. We are soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. We will publish a notice in the **Federal Register** upon OMB approval of the information collection requirements. Comments should be submitted to the OMB desk officer for SSA within 30 days of publication of these final rules at the following address: Office of Management and Budget, Attn: Desk Officer for SSA, ≤ New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20530.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416:

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: March 27, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set forth in the preamble, we are amending Chapter III of Title 20, Code of Federal Regulations as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for Subpart E of Part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

2. Section 416.570 is amended by revising the third sentence to read as follows:

§ 416.570 Adjustment-general rule.

* * * Absent a specific request from the person from whom recovery is sought, no overpayment made under title II, title VIII or title XVIII of the Act will be recovered by adjusting SSI benefits.

* * * * *

3. Section 416.572 is amended by revising the heading and paragraphs (a), (b), (c)(2), and (e) to read as follows:

§ 416.572 Are title II benefits and title VIII benefits subject to adjustment to recover title XVI overpayments?

(a) *Definitions.*

(1) *Cross-program recovery.* Cross-program recovery is the process that we will use to collect title XVI overpayments from benefits payable to you in a month under title II and title VIII of the Act.

(2) *Benefits payable in a month.* For purposes of this section, benefits payable in a month means the amount of title II or title VIII benefits that you would actually receive in that month. For title II benefits, it includes your monthly benefit and any past due benefits after any reductions or deductions listed in § 404.401(a) and (b) of this chapter. For title VIII benefits, it includes your monthly benefit and any past due benefits after any reduction by the amount of income for the month as required by section 805 of the Act.

Title II Example: A person is entitled to monthly title II benefits of $1000. The first benefit payment the person would receive includes past-due benefits of $1000. The amount of benefits payable in that month for purposes of cross-program recovery is $2000. So, if we were recovering 10 percent of that month's benefit, we would be recovering $200. The monthly benefit payable for subsequent months is $1000. So, if we were recovering 10 percent of that amount, we would be recovering $100. If $200 would be deducted from the person's title II benefits in a later month because of excess earnings as described in §§ 404.415 and 404.416 of this chapter, the benefit payable in that month for purposes of cross-program recovery would be $800. So, if we were recovering 10 percent of that month's benefit, we would be recovering $80.

Title VIII Example: A person qualifies for monthly title VIII benefits of $384. The person is receiving a monthly pension payment of $150 from his employer. The title VIII benefit payable in a particular month would be reduced by $150 under section 805 of the Act (42 U.S.C. 1005). The title VIII benefit payable and subject to withholding in that month for purposes of cross-program recovery would be $234. So, if we were recovering 10 percent of that month's benefit, we would be recovering $23.40.

(3) *Not currently eligible for SSI cash benefits.* This means that you are not receiving any cash payment, including State supplementary payments that we administer, under any provision of title XVI of the Act or under section 212(b) of Pub. L. 93–66 (42 U.S.C. 1382 note).

(b) *When we may collect title XVI overpayments using cross-program recovery.*

(1) Except as provided in paragraphs (b)(2) through (4) of this section, we may use cross-program recovery to collect a title XVI overpayment you owe if:

(i) You are not currently eligible for SSI cash benefits, and

(ii) You are receiving title II or title VIII benefits.

(2) We will not start cross-program recovery against your title II or title VIII benefits if you are refunding your title XVI overpayment by regular monthly installments.

(3) We will not start cross-program recovery against your title II benefits if we are adjusting your title II benefits to recover a title II overpayment under § 404.502 of this chapter or a title VIII overpayment under section 808(a)(1) of the Act (42 U.S.C. 1008(a)(1)).

(4) We will not start cross-program recovery against your title VIII benefits if we are adjusting your title VIII benefits to recover a title VIII overpayment under section 808(a)(1) of the Act (42 U.S.C. 1008(a)(1)).

(c) * * *

(2) We will withhold a specific amount from the title II benefits and/or title VIII benefits payable to you in a month (see paragraph (e) of this section);

* * * * *

(e) *Rate of withholding.*

(1) We will collect the overpayment at the rate of 10 percent of the title II benefits and title VIII benefits payable to you in any month, unless:

(i) You request and we approve a different rate of withholding, or

(ii) You or your spouse willfully misrepresented or concealed material information in connection with the overpayment.

(2) In determining whether to grant your request that we withhold at a lower rate than 10 percent of the title II or title VIII benefits payable in a month, we will use the criteria applied under § 416.571 to similar requests about withholding from title XVI benefits.

(3) If you or your spouse willfully misrepresented or concealed material information in connection with the overpayment, we will collect the

overpayment at the rate of 100 percent of the title II benefits and title VIII benefits payable in any month. We will not collect at a lesser rate. (See § 416.571 for what we mean by concealment of material information.)

[FR Doc. 02–13902 Filed 6–3–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 18, 44, 46, 48, 49, 56, 57, 70, 71, 75 and 90

MSHA Headquarters Address Change

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: The Mine Safety and Health Administration is amending its regulations to reflect changes to the address of the Headquarters office. MSHA is relocating its Headquarters offices and these amendments to the regulations are necessary to inform the public of MSHA's new address.

EFFECTIVE DATE: June 10, 2002.

ADDRESSES: This final rule is available on MSHA's internet site, *http://www.msha.gov,* at the ''Statutory and Regulatory Information'' icon.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Blvd., Room 627, Arlington, Virginia 22203–1984, *Nichols-Marvin@msha.gov,* (703) 235–1910 (telephone) or (703) 235–5551 (facsimile) before June 10, 2002 and 1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209–3939, (202) 693–9440 (telephone), (202) 693–9441 (facsimile) thereafter.

SUPPLEMENTARY INFORMATION:

A. Background

On June 10, 2002, MSHA will move its Headquarters office from 4015 Wilson Blvd., Arlington, Virginia 22203–1984 to 1100 Wilson Blvd., Arlington, Virginia 22209–3939.

Because this amendment deals with agency management and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 USC 553(a)(2) and (b)(3)(A).

Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing with a change in address.

B. Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Executive Order 12866 Regulatory Planning and Review

This final rule is not a ''regulatory action'' under section 3 of Executive Order 12866, and has not been reviewed by the Office of Management and Budget. The rule is an administrative action that changes the address of a Federal agency. Because the rule is limited to agency organization, management and personnel, it falls within the exclusion set forth in section 3(d)(3) of the Executive Order.

In promulgating this rule, the Agency has adhered to the regulatory philosophy and applicable principles of regulation set forth in section 1 of the Executive Order.

D. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local or tribal governments, or by the private sector.

Accordingly, Chapter I of Title 30 of the Code of Federal Regulations is amended as follows:

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

1. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957 and 961.

§ 18.82 [Amended]

2. In § 18.82(a), the address for the Assistant Secretary of Labor for Mine Safety and Health is revised to read ''1100 Wilson Blvd., Room 2322, Arlington, Virginia 22209–3939.''

PART 44—RULES OF PRACTICE FOR PETITIONS FOR MODIFICATION OF MANDATORY SAFETY STANDARDS

3. The authority citation for part 44 continues to read as follows:

Authority: 30 U.S.C. 957.

§ 44.10 [Amended]

4. In § 44.10, the address for the Office of Standards, Regulations and Variances is revised to read ''1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209–3939.''

§ 44.21 [Amended]

5. In § 44.21(a), the address for the Assistant Secretary of Labor for Mine Safety and Health is revised to read ''1100 Wilson Blvd., Room 2322, Arlington, Virginia 22209–3939.''

PART 46—TRAINING AND RETRAINING OF MINERS ENGAGED IN SHELL DREDGING, OR EMPLOYED AT SAND, GRAVEL, SURFACE STONE, SURFACE CLAY, COLLOIDAL PHOSPHATE, OR SURFACE LIMESTONE MINES.

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

Authority: 30 U.S.C. 811, 825.

§ 46.2 [Amended]

7. In § 46.2(d)(1)(iii), the address for the Office of Standards, Regulations and Variances is revised to read ''1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209–3939.''

§ 46.3 [Amended]

8. In § 46.3(h), the address for the Office of Educational Policy and Development is revised to read ''1100 Wilson Blvd., Room 2100, Arlington, Virginia 22209–3939.''

PART 48—TRAINING AND RETRAINING OF MINERS

9. The authority citation for part 48 continues to read as follows:

Authority: 30 U.S.C. 811, 825.

§ 48.3 [Amended]

10. In § 48.3(i), the addresses for the Administrator for MSHA Coal Mine Safety and Health and the Administrator for Metal and Non-metal Safety and Health are revised to read ''1100 Wilson Blvd., Room 2424 (Coal) or Room 2436 (Metal and Nonmetal), Arlington, Virginia 22209–3939.''

§ 48.23 [Amended]

11–12. In § 48.23(i), the addresses for the Administrator for Coal Mine Safety and Health and the Administrator for Metal and Non-metal Safety and Health are revised to read ''1100 Wilson Blvd., Room 2424 (Coal) or Room 2436 (Metal and Nonmetal), Arlington, Virginia 22209–3939.''

§ 48.32 [Amended]

13. In § 48.32(a), the addresses for the Administrator for Coal Mine Safety and Health and the Administrator for Metal and Non-metal Safety and Health are revised to read ''1100 Wilson Blvd., Room 2424 (Coal) or Room 2436 (Metal and Nonmetal), Arlington, Virginia 22209–3939.''

PART 49—MINE RESCUE TEAMS

14. The authority citation for part 49 continues to read as follows:

Authority: 30 U.S.C. 811, 825(e), 957.

§ 49.3 [Amended]

15. In § 49.3(h)(2), the addresses for the Administrator for Coal Mine Safety and Health and the Administrator for Metal and Nonmetal Mine Safety and Health are revised to read ''1100 Wilson Blvd., Room 2424 (Coal) or Room 2436 (Metal and Nonmetal), Arlington, Virginia 22209–3939.''

§ 49.4 [Amended]

16. In § 49.4(i)(2), the addresses for the Administrator for Coal Mine Safety and Health and the Administrator for Metal and Nonmetal Mine Safety and Health are revised to read ''1100 Wilson Blvd., Room 2424 (Coal) or Room 2436 (Metal and Nonmetal), Arlington, Virginia 22209–3939.''

§ 49.8 [Amended]

17. In § 49.8(e), the addresses for the Administrator for Coal Mine Safety and Health and the Administrator for Metal and Nonmetal Mine Safety and Health are revised to read ''1100 Wilson Blvd., Room 2424 (Coal) or Room 2436 (Metal and Nonmetal), Arlington, Virginia 22209–3939.''

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

18. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

§ 56.6000 [Amended]

19. In § 56.6000, in the definition for *laminated partition,* the address for MSHA is revised to read ''1100 Wilson Blvd., Room 2436, Arlington, Virginia 22209–3939.''

§ 56.6133 [Amended]

20. In § 56.6133(b), the address for MSHA is revised to read ''1100 Wilson Blvd., Room 2436, Arlington, Virginia 22209–3939.''

§ 56.6201 [Amended]

21. In § 56.6201(a)(2), the address for MSHA is revised to read ''1100 Wilson Blvd., Room 2436, Arlington, Virginia 22209–3939.''

22. In § 56.6201(b)(2), the address for MSHA is revised to read ''1100 Wilson Blvd., Room 2436, Arlington, Virginia 22209–3939.''

§ 56.14130 [Amended]

23. In § 56.14130(j), the address for the Administrator for Metal and Nonmetal Mine Safety and Health is revised to read ''1100 Wilson Blvd., Room 2436, Arlington, Virginia 22209–3939.''

§ 56.14131 [Amended]

24. In § 56.14131(d), the address for the Administrator for Metal and Nonmetal Mine Safety and Health is revised to read ''1100 Wilson Blvd., Room 2436, Arlington, Virginia 22209–3939.''

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

25. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

§ 57.6000 [Amended]

26. In § 57.6000, in the definition for *laminated partition,* the address for MSHA is revised to read ''1100 Wilson Blvd., Room 2436, Arlington, Virginia 22209–3939.''

§ 57.6133 [Amended]

27. In § 57.6133(b), the address for MSHA is revised to read ''1100 Wilson Blvd., Room 2436, Arlington, Virginia 22209–3939.''

§ 57.6201 [Amended]

28. In § 57.6201(a)(2), the address for MSHA is revised to read ''1100 Wilson Blvd., Room 2436, Arlington, Virginia 22209–3939.''

29. In § 57.6201(b)(2), the address for MSHA is revised to read ''1100 Wilson Blvd., Room 2436, Arlington, Virginia 22209–3939.''

§ 57.14130 [Amended]

30. In § 57.14130(j), the address for the Administrator for Metal and Nonmetal Mine Safety and Health is revised to read ''1100 Wilson Blvd., Room 2436, Arlington, Virginia 22209–3939.''

§ 57.14131 [Amended]

31. In § 57.14131(d), the address for the Administrator for Metal and Nonmetal Mine Safety and Health is revised to read ''1100 Wilson Blvd., Room 2436, Arlington, Virginia 22209–3939.''

§ 57.22005 [Amended]

32. In § 57.22005(b), the address for the Assistant Secretary of Labor for Mine Safety and Health is revised to read ''1100 Wilson Blvd., Room 2322, Arlington, Virginia 22209–3939.''

PART 70—MANDATORY HEALTH STANDARDS—UNDERGROUND COAL MINES

33. The authority citation for part 70 continues to read as follows:

Authority: 30 U.S.C. 811 and 813(h).

§ 70.204 [Amended]

34. In § 70.204(e), the address for MSHA Coal Mine Safety and Health is revised to read ''1100 Wilson Blvd., Room 2424, Arlington, Virginia 22209–3939.''

§ 70.1900 [Amended]

35. In § 70.1900(c), the address for the Office of Standards, Regulations and Variances is revised to read ''1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209–3939.''

PART 71—MANDATORY HEALTH STANDARDS—SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

36. The authority citation for part 71 continues to read as follows:

Authority: 30 U.S.C. 811, 951, 957.

§ 71.204 [Amended]

37. In § 71.204(e), the address for MSHA Coal Mine Safety and Health is revised to read ''1100 Wilson Blvd., Room 2424, Arlington, Virginia 22209–3939.''

§ 71.402 [Amended]

38. In § 71.402(b), the address for MSHA is revised to read ''1100 Wilson Blvd., Room 2424, Arlington, Virginia 22209–3939.''

§ 71.500 [Amended]

39. In § 71.500(c), the address for the Health Division of MSHA Coal Mine Safety and Health is revised to read ''1100 Wilson Blvd., Room 2416, Arlington, Virginia 22209–3939.''

§ 71.700 [Amended]

40. In § 71.700(a), the address for MSHA is revised to read ''1100 Wilson Blvd., Room 2424, Arlington, Virginia 22209–3939.''

PART 72—HEALTH STANDARDS FOR COAL MINES

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

Authority: 30 U.S.C. 811, 813(h), 957, 961.

§ 72.710 [Amended]

42. In § 72.710, the address for the Office of Standards, Regulations and Variances is revised to read ''1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209–3939.''

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

43. The authority citation for Part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

§ 75.301 [Amended]

44. In § 75.301, in the definitions of *noncombustible structure or area* and *noncombustible material,* the address for the Office of Standards, Regulations and Variances is revised to read ''1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209–3939.''

§ 75.322 [Amended]

45. In § 75.322, the address for MSHA is revised to read ''1100 Wilson Blvd., Room 2424, Arlington, Virginia 22209–3939.''

§ 75.333 [Amended]

46. In § 75.333(d)(1), the address for the Office of Standards, Regulations and Variances is revised to read ''1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209–3939.''

47. In § 75.333(e)(1)(i), the address for the Office of Standards, Regulations and Variances is revised to read ''1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209–3939.''

48. In § 75.333(e)(3), the address for the Office of Standards, Regulations and Variances is revised to read ''1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209–3939.''

49. In § 75.333(f), the address for the Office of Standards, Regulations and Variances is revised to read ''1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209–3939.''

§ 75.335 [Amended]

50. In § 75.335(a)(1)(iv), the address for the Office of Standards, Regulations and Variances is revised to read ''1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209–3939.''

51. In § 75.335(a)(2), the address for the Office of Standards, Regulations and Variances is revised to read ''1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209–3939.''

§ 75.523 [Amended]

52. In § 75.523–1(c), the address for the Office of Technical Support is revised to read ''1100 Wilson Blvd., Room 2329, Arlington, Virginia 22209–3939.''

§ 75.818 [Amended]

53. In § 75.818(b)(4), the address for the Office of Standards, Regulations and Variances is revised to read ''1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209–3939.''

§ 75.1710–1 [Amended]

54. In § 75.1710–1(f), the address for the Office of Technical Support is revised to read ''1100 Wilson Blvd., Room 2329, Arlington, Virginia 22209–3939.''

§ 75.1712–6 [Amended]

55. In § 75.1712–6(c), the address for the Health Division of MSHA Coal Mine Safety and Health is revised to read ''1100 Wilson Blvd., Room 2416, Arlington, Virginia 22209–3939.''

§ 75.1900 [Amended]

56. In § 75.1900, in the definition of *Noncombustible Material,* the address for the Office of Standards, Regulations and Variances is revised to read ''1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209–3939.''

PART 90—MANDATORY HEALTH STANDARDS—COAL MINERS WHO HAVE EVIDENCE OF PNEUMOCONIOSIS

57. The authority citation for Part 90 continues to read as follows:

Authority: 30 U.S.C. 811 and 813(h).

§ 90.3 [Amended]

58. In § 90.3(d), the address for the Health Division of MSHA Coal Mine Safety and Health is revised to read ''1100 Wilson Blvd., Room 2416, Arlington, Virginia 22209–3939.''

59. In § 90.3(e), the address for the Health Division of MSHA Coal Mine Safety and Health is revised to read ''1100 Wilson Blvd., Room 2416, Arlington, Virginia 22209–3939.''

§ 90.204 [Amended]

60. In § 90.204(e), the address for MSHA Coal Mine Safety and Health is revised to read ''1100 Wilson Blvd., Room 2424, Arlington, Virginia 22209–3939.''

Signed at Arlington, VA, this 28th day of May 2002.

John R. Caylor,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 02–13906 Filed 6–3–02; 8:45 am]

BILLING CODE 4310–43–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[USCG–2001–9175]

RIN 2115–AG15

Revised Options for Responding to Notices of Violations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends the procedure for a Notice of Violation when the recipient fails to either accept or decline it within 45 days. Instead of automatically converting the ''fail to respond'' Notice of Violation to a marine violation case with its lengthier processing and potentially higher penalties, it is treated as a default and we proceed with the civil penalty. The party retains its option to choose marine violation processing at any time during the 45-day response period.

DATES: This final rule is effective July 5, 2002.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2001–9175 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call LCDR Scott Budka, Project Manager, Office of Investigations & Analysis (G–MOA), Coast Guard, telephone 202–267–2026. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 10, 2001, we published a notice of proposed rulemaking (NPRM) entitled ''Revised Options for Responding to Notices of Violations'' in the **Federal Register** (66 FR 63640). We received 4 letters commenting on the proposed rule. No public hearing was requested and none was held.

Background

We explained the background of Notices of Violations (NOVs) and our

recent review of their use in the NPRM. Today, we use NOVs only in small oil discharge (under 100 gallons) and minor violations of our pollution prevention regulations; we have not expanded their use since their introduction in 1994. The changes this rule makes to the NOV process allow it to be more easily administered through our Marine Information for Safety and Law Enforcement system, which came on line in late 2001, and will support expanding the use of NOVs to other programs.

Discussion of Comments and Changes

A total of 4 letters were sent to the docket, with one being a clarification of an earlier letter. One commenter stated a party's failure to respond to an NOV within 45 days of its issuance might result from misdelivery of the NOV. If a party claims it failed to receive the original NOV, the Coast Guard's procedures allow us to review the case.

Another commenter suggested changes that are beyond the scope of this rulemaking. Since the changes suggested concern internal Coast Guard processes, we have delivered them to the appropriate offices to review and consider them.

The third commenter expressed support for this rulemaking.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

As we discussed in the NPRM, this rule only changes the default when a party fails to respond to an NOV within 45 days; currently, only about 1% of all NOV recipients. These parties can avoid the impact of this rule entirely, by making the required NOV response within 45 days.

Small Entities

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

As previously noted, this rule only changes the default when a party fails to respond to an NOV within 45 days. These parties can avoid any impact of this rule, simply by making the required NOV response (to accept or decline the NOV) within 45 days. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. Small entities may call the Project Manager listed under **FOR FURTHER INFORMATION CONTACT**.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1,

paragraph (34)(a), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. The changes here are procedural and affect only the default treatment of ''fail to respond'' NOVs. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 1 as follows:

PART 1—GENERAL PROVISIONS

Subpart 1.07—Enforcement; Civil and Criminal Penalty Proceedings

1. The authority citation for subpart 1.07 continues to read as follows:

Authority: 14 U.S.C. 633; Sec. 6079(d), Pub. L. 100–690, 102 Stat. 4181; 49 CFR 1.46.

2. In § 1.07–11, a new paragraph (b)(7) is added, paragraph (d) is revised, and paragraphs (e) and (f) are added, as follows:

§ 1.07–11 Notice of Violation.

* * * * *

(b) * * *

(7) A statement that failure to either pay the proposed penalty on the Notice of Violation or decline the Notice of Violation and request a hearing within 45 days will result in a finding of default and the Coast Guard will proceed with the civil penalty in the amount recommended on the Notice of Violation without processing the violation under the procedures described in 33 CFR 1.07–10(b).

* * * * *

(d) If a party declines the Notice of Violation within 45 days, the case file will be sent to the District Commander for processing under the procedures described in 33 CFR 1.07–10(b).

(e) If a party pays the proposed penalty on the Notice of Violation within 45 days, a finding of proved will be entered into the case file.

(f) If within 45 days of receipt a party—

(1) Fails to pay the proposed penalty on the Notice of Violation; and

(2) Fails to decline the Notice of Violation—the Coast Guard will enter a finding of default in the case file and proceed with the civil penalty in the amount recommended on the Notice of Violation without processing the violation under the procedures described in 33 CFR 1.07–10(b).

Dated: May 23, 2002.

Jeffrey P. High,

Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–13963 Filed 6–3–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–013]

Drawbridge Operating Regulation; Bonfouca Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117.433 governing the operation of the State Route 433 swing span drawbridge across Bonfouca Bayou, mile 7.0, at Slidell, St. Tammany Parish, Louisiana. This deviation allows the draw of the State Route 433 swing span drawbridge to remain closed to navigation from 8 a.m. until noon on June 12, 2002. This temporary deviation will allow for installation of new electrical parts for continued operation of the draw span of the bridge.

DATES: This deviation is effective from 8 a.m. until noon on Wednesday, June 12, 2002.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obc), 501 Magazine Street, New Orleans, Louisiana, 70130–3396. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at the address given above or telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The SR 433 swing span drawbridge across Bonfouca Bayou, mile 7.0, at Slidell, St. Tammany Parish, Louisiana, has a vertical clearance in the closed-to-navigation position of 3.5 feet above mean high water and 6.7 feet above mean low water at the pivot pier. The vertical clearance at the rest pier is 8.2 feet above mean high water and 11.4 feet above mean low water in the closed-to-navigation position. The bridge provides unlimited vertical clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, fishing vessels, sailing vessels, and other recreational craft.

Presently, the draw operates as follows: The draw need not open for passage of vessels from 7 a.m. to 8 a.m. and from 1:45 p.m. to 2:45 p.m., Monday through Friday except Federal Holidays. The draw need open only on the hour and half-hour from 6 a.m. to 7 a.m. and from 3 p.m. to 6 p.m., Monday through Friday except federal holidays. The draw shall open on signal from 9 p.m. to 5 a.m., if at least 4 hours notice is given to the Louisiana Department of Transportation and Development Security Service at (540) 375–0100. At all other times the draw shall open on signal.

The Louisiana Department of Transportation and Development requested a temporary deviation for the operation of the drawbridge to accommodate maintenance work. The work involves installation of new electrical parts. This work is essential for continued operation of the draw span of the bridge.

This deviation allows the draw of the State Route 433 swing span drawbridge to remain closed to navigation from 8 a.m. until noon on Wednesday, June 12, 2002.

Dated: May 24, 2002.

D.F. Ryan,

Captain. U.S.C.G., Commander, Eighth Coast Guard District, Acting.

[FR Doc. 02–13961 Filed 6–3–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–014]

Drawbridge Operating Regulation; Three Mile Creek, AL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117 governing the operation of the CSX Transportation railroad swing span drawbridge across Three Mile Creek, mile 0.3, at Mobile, Alabama. This deviation allows the draw of the railroad swing span bridge to remain closed to navigation from 8

a.m. until 5:30 p.m. on June 17 and 18, 2002. This temporary deviation will allow for replacement of machinery struts.

DATES: This deviation is effective from 8 a.m. on Monday, June 17, 2002 until 5:30 p.m. on Tuesday, June 18, 2002.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obc), 501 Magazine Street, New Orleans, Louisiana, 70130–3396. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The CSX Transportation railroad swing span drawbridge across Three Mile Creek, Baldwin County, Alabama has a vertical clearance in the closed-to-navigation position of 10 feet above mean high water and 12 feet above mean low water. The bridge provides unlimited vertical clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows and fishing vessels. Presently, the draw opens on signal for the passage of vessels.

CSX Transportation requested a temporary deviation for the operation of the drawbridge to accommodate maintenance work. The work involves replacement of the deficient machinery struts on the bridge. This work is essential for continued operation of the draw span of the bridge and is expected to eliminate frequent breakdowns resulting in emergency bridge closures.

This deviation allows the draw of the CSX Transportation railroad swing span drawbridge to remain closed to navigation from 8 a.m. until 5:30 p.m. on June 17 and 18, 2002.

Dated: May 24, 2002.

D.F. Ryan,

Captain, U.S.C.G., Commander, Eighth Coast Guard District, Acting.

[FR Doc. 02–13962 Filed 6–3–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 02–009]

RIN 2115–AA97

Security Zone: Port Valdez and Valdez Narrows, Valdez, Alaska

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing the Trans-Alaska Pipeline System (TAPS) Valdez Terminal Complex, Valdez, Alaska and TAPS Tank Vessels and a security zone in the Valdez Narrows, Port Valdez, Alaska. The security zones are necessary to protect the Alyeska Marine Terminal and vessels from damage or injury from sabotage, destruction or other subversive acts. Entry of vessels into these security zones is prohibited unless specifically authorized by the Captain of the Port, Prince William Sound, Alaska.

DATES: This rule is effective from 8 a.m. April 1, 2002 until July 30, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Prince William Sound 02–009 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, P.O. Box 486, Valdez, Alaska 99686, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Milo Ortiz, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7205.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In accordance with 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. The Coast Guard is taking this action for the immediate protection of the national security interests in light of terrorist acts perpetrated on September 11, 2001. Also, in accordance with 5 U.S.C. 553(d)(3), the Coast Guard finds good cause to exist for making this regulation effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of the effective date would be contrary to the public interest because immediate action is necessary to provide for the safety of the Trans-Alaska Pipeline System (TAPS) terminal and TAPS tank vessels. This temporary rule will replace the temporary rules contained in 33 CFR 165.T17–003, 33 CFR 165.T17–004, and 33 CFR 165.T17–005, all of which expire on June 1, 2002.

Discussion of the Regulation

The Coast Guard is establishing a temporary security zone while the notice of proposed rulemaking (NPRM) is drafted and published with a request for comments. This temporary final rule is required to ensure a smooth transition from temporary final rule to final rule. This temporary final rule, which we expected to be our proposed final rule, will help ensure protection of the TAPS terminal and TAPS tank vessels during the notice and comment period for the proposed final rule.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Economic impact is expected to be minimal because of the short duration of this rule and the season in which it is in effect.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by this rule is expected to be minimal because of the short duration of the rule. Since the time frame this rule is in effect may cover commercial harvests of fish in the area, the entities most likely affected are commercial and native subsistence fishermen. The Captain of The Port will consider applications for

entry into the security zone on a case-by-case basis; therefore, it is likely that very few, if any, small entities will be impacted by this rule. Those interested may apply for a permit to enter the zone by contacting Marine Safety Office, Valdez at the above contact number.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this temporary final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16745.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§§ 165.T17–003—165.T17–005 [Removed]

2. Remove temporary §§ 165.T17–003, 165.T17–004, and 165.T17–005.

3. A new temporary § 165.T17–009 is added to read as follows:

§ 165.T17–009 Port Valdez and Valdez Narrows, Valdez, Alaska—security zone.

(a) *Trans-Alaska Pipeline System (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska and TAPS Tank Vessels.* (1) The following is a security zone: the enclosed waters within a line beginning on the southern shoreline of Port Valdez at 61°04′57″ N, 146°26′20″ W; thence northerly to 61°06′24″ N, 146°26′20″ W; thence east to 61°06′24″ N, 146°21′15″ W; thence south to 61°05′07″ N, 146°21′15″ W; thence west along the shoreline and including the area 2000 yards inland along the shoreline to the starting point at 61°04′57″ N, 146°26′20″ W. This security zone encompasses all waters approximately one mile north, east and west of the TAPS Terminal between Allison Creek (61°05′07″ N, 146°21′15″ W) and Sawmill Spit (61°04′57″ N, 146°26′20″ W).

(2) The following is a security zone: all waters within 200 yards of the shore and offshore facilities of the TAPS Terminal between Allison Creek (61°05′07″ N, 146°21′15″ W) and Sawmill Spit (61°04′57″ N, 146°26′20″ W).

(3) The following is a security zone: the waters within 200 yards of any TAPS tank vessel maneuvering to approach, moor, unmoor or depart the TAPS Terminal or is transiting, maneuvering, laying to or anchored within the boundaries of the Captain of the Port Zone, Prince William Sound described in 33 CFR 3.85–20(b).

(b) *Valdez Narrows, Port Valdez, Valdez, Alaska.* (1) The following is a security zone: all waters within 200 yards of the Valdez Narrows Tanker Optimum Track line bounded by a line beginning at 61°05′16.0″ N, 146°37′20.0″ W; thence south west to 61°04′00.0″ N, 146°39′52.0″ W; thence southerly to 61°02′33.5″ N, 146°41′28.0″ W; thence north west to 61°02′40.5″ N, 146°41′47.5″ W; thence north east to 61°04′06.0″ N, 146°40′14.5″ W; thence north east to 61°05′23.0″ N, 146°37′40.0″ W; thence south east back to the starting point at 61°05′16.0″ N, 146°37′20.0″.

(2) Valdez Narrows Tanker Optimum Track line is a line commencing at 61°05′23.0″ N, 146°37′22.5″ W; thence south westerly to 61°04′03.2″ N, 146°40′03.2″ W thence southerly to 61°03′00″ N, 146°41′12″ W.

(3) This security zone encompasses all waters approximately 200 yards either side of the Valdez Narrows Optimum Track line.

(c) *Effective dates.* This section is effective from 8 a.m. April 1, 2002 until July 30, 2002.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 49 CFR 1.46, the authority for this section includes 33 U.S.C. 1226.

(e) *Regulations.* (1) The general regulations governing security zones contained in 33 CFR 165.33 apply.

(2) Tank vessels transiting directly to the TAPS terminal complex, engaged in the movement of oil from the terminal or fuel to the terminal, and vessels used to provide assistance or support to the tank vessels directly transiting to the terminal, or to the terminal itself, and that have reported their movements to the Vessel Traffic Service may operate as necessary to ensure safe passage of tank vessels to and from the terminal. All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port and the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign by siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws.

Dated: April 1, 2002.

P.M. Coleman,

Commander, U.S. Coast Guard, Captain of the Port Prince William Sound, Alaska.

[FR Doc. 02–13960 Filed 6–3–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[PAC AREA–02–001]

RIN 2115–AG33

Protection of Naval Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing regulations for the safety and security of U.S. naval vessels in the navigable waters of the United States. Naval Vessel Protection Zones will provide for the regulation of vessel traffic in the vicinity of many U.S. naval vessels in the navigable waters of the United States.

DATES: This rule is effective beginning June 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [PAC AREA 02–001] and are available for inspection or copying at U.S. Coast Guard, Pacific Area Marine Transportation Branch (Pmt), Coast Guard Island, Bldg. 50–6, Alameda, CA 94501 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Steve Danscuk, Commander, Pacific Area Marine Transportation Branch (Pmt), at telephone number (510) 437–2943.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 20, 2002, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Protection of Naval Vessels in the **Federal Register** (67 FR 12940). The Coast Guard received five letters commenting on the proposed rule. No public hearing was requested, and none was held.

On February 21, 2002, Coast Guard Commander, Atlantic Area, Marine Safety Division, Response Branch (Amr), published a notice of proposed rulemaking in the **Federal Register** (67 FR 7992) proposing to establish a permanent subpart G to 33 CFR part 165 and setting out general provisions pertaining to that subpart. On May 13, 2002, Atlantic Area's final rule was published in the **Federal Register** (67 FR 31958). The general provisions of subpart G are discussed in the preamble to the Atlantic Area rule and would apply to Pacific Area naval vessel protection zones. This rule, applicable in Coast Guard Pacific Area, adds a new § 165.2030, which creates restrictions similar to Atlantic Area's § 165.2025.

Under 5 U.S.C. § 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Because naval commanders have an urgent and critical security need to control the movements of vessels in the vicinity of large naval vessels, this rule needs to become effective on June 15, 2002. Otherwise, there will be a regulatory gap when the temporary final rule (66 FR 48780 and 48782), which is now in effect, expires on that date. The Coast Guard believes that its finding of good cause in this instance is consistent with the principle of fundamental fairness which requires that all affected persons be afforded a reasonable time to prepare for the effective date of a rulemaking. This is because the temporary final rule, which has been in effect since September 21, 2002, is very similar to this rule. The Coast Guard believes that the temporary final rule has given the public adequate time to adjust to and prepare for naval vessel protection zones.

Background and Purpose

These zones are necessary to provide for the safety and security of United States naval vessels in the navigable waters of the United States. The regulations are issued under the authority contained in 14 U.S.C. 91. On September 21, 2001, the Coast Guard published temporary final rules entitled ''Protection of Naval Vessels'' in the **Federal Register** (66 FR 48780 and 48782). Before issuing these temporary final rules, no regulations existed implementing 14 U.S.C. 91. The temporary final rules are in effect until June 15, 2002.

We have determined that a continuing need exists for the protection of naval vessels. Therefore, we are implementing a permanent rule that will replace the Pacific Area temporary rule (66 FR 48782) by June 15, 2002.

Discussion of Comments and Changes

The Coast Guard received five letters in response to the March 20, 2002 notice of proposed rulemaking (67 FR 12940). Letters from the Suquamish Tribe, the Muckleshoot Indian Tribal Council, the law firm of Morisset Schlosser representing the Tulalip Tribe, and the Northwest Indian Fisheries Commission expressed concern over the rule's potential impact on the treaty fishing rights of federally recognized Indian Tribes in Puget Sound, Washington. The Office of Hawaiian Affairs, a state agency that represents Native Hawaiian interests, expressed concern over the impacts of the proposed rule on ocean activities conducted by Native Hawaiians.

Comment 1. The Puget Sound Tribes stated that they have reserved rights of access for fishing in usual and accustomed places. They conduct fisheries enforcement patrols, perform fisheries and water quality research and harvest shellfish. They stated that such activities may bring tribal members and their vessels in proximity to naval vessels. The Tribes averred that there is a potential for substantial direct effects

on their activities in the following circumstances: when the naval vessel protection zone around a moored or anchored naval vessel prevents tribal vessels from fishing in a prime tribal area during peak fishing times; when a transiting vessel interrupts a tribal fishing activity in progress; and when a tribal vessel, while engaged in fishing, drifts into a naval vessel protection zone of a moored or anchored naval vessel.

Response 1. The Coast Guard recognizes the rights of the treaty Indian fishers under the Stevens Treaties, as clarified in the well-known *U.S.* v. *Washington* line of cases, beginning with *United States* v. *Washington,* 384 F.Supp. 312 (W.D. Wash. 1974). We took those rights into account during the rulemaking process. The Coast Guard acknowledges that there could be some effects if a naval vessel protection zone causes a tribal vessel to be displaced. The rule has built-in flexibility, however, to address the Tribes' concerns. And, based on the Coast Guard's consideration of the comments received, the Coast Guard Thirteenth District will continue to facilitate dialogue between the Tribes and the Navy to develop local implementation policies in Puget Sound designed to minimize the possibility of effects on the Tribes, consistent with security concerns.

Treaty rights are not absolute and must be balanced against the rights of the United States. The Justice Department articulated the position of the United States as follows: ''The Justice Department represents the United States on its own behalf and as a trustee on behalf of the affected Indian Tribes who claim fishing rights under the Stevens treaties. No claims have been made [in this case, *i.e. U.S.* v. *Washington*] against the United States. The United States reserves its right to assert all available defenses, including but not limited to navigational servitude and defense powers.'' *Response by the Department of Justice to Judicial Interrogatories Posed by the U.S. District Court, Western District of Washington, dated 3 November 1992.*

In this instance, the treaty rights must be balanced against the United States' inherent right and obligation to safeguard and protect its warships and naval vessels from sabotage and attack. Since the October 2000 bombing of the U.S.S. COLE in Yemen, which was carried out by an explosives-laden small boat, the U.S. military has placed increased emphasis on naval force protection. And the terrorist attacks of September 11, 2001 proved that the U.S. mainland is not immune from attack. Therefore, the Coast Guard has implemented this rule as a force protection measure to help Naval commanders within Pacific Area to protect their ships and their crews.

Comment 2. The Tribes commented that naval vessel security and Tribal fishing rights protection can both be achieved if there is improved communication and coordination, scheduling of port calls and routine non-emergency vessel movements to avoid fisheries, and placement of Tribal liaison personnel on Coast Guard and Seattle Harbor Patrol vessels to assist in the identification of Tribal fishers during peak tribal fishing periods. To assist the government, the Tribes can provide information about Tribal fishery openings and the names of authorized fishers and their vessels. There should be a single government point of contact in each geographic area to foster good communication so that accidental encroachment incidents can be quickly and agreeably resolved.

Response 2. The Coast Guard agrees that communication and coordination between the Tribes, the Coast Guard, and the Navy is vital so that any impact of the rule on Tribal treaty fishing rights can be minimized. The Coast Guard has already had an informative meeting with representatives of the Muckleshoot Tribe, Suquamish Tribe, and the Navy on April 25, 2002. The Coast Guard Thirteenth District plans to continue to facilitate discussions between potentially affected Tribes and the Navy to develop local implementation policies in Puget Sound designed to minimize the possibility of effects on the Tribes, consistent with security concerns.

The Coast Guard believes that the Tribes' recommendation to the Navy to schedule port calls and routine non-emergency vessel movements to avoid impacts on Tribal fishers and fisheries has potential merit, when such actions are consistent with naval vessel and national security. The Coast Guard has received assurances from the Navy that the Navy is willing and able to gather information from the Tribes about fishery dates, locations, and expected number of Tribal vessels and relay this information to naval commanders in the area. The Navy's primary point of contact for gathering this information from the Tribes is the Watch Commander, Regional Operations Center, Navy Region Northwest, who can be reached 24 hours per day at (360) 315–5123.

The Coast Guard is committed to working with the Tribes and agrees that additional discussions with representatives of potentially affected Tribes and the Navy are desirable to establish specific local implementation policies to achieve both security and tribal objectives. Towards that end, the Coast Guard's point of contact is the Coast Guard District Thirteen's Tribal Liaison Office, which can be reached 24 hours per day via the District Command Center at (206) 220–7001.

With regard to the Tribes' concern over accidental encroachment into naval vessel protection zones, the rule does not distinguish between an accidental or intentional violation of the 100-yard exclusionary zone. An accidental violation may result in enforcement action. But the rule is written to encourage those who may need to come within 100 yards of a large naval vessel to request permission from the on-scene Coast Guard personnel, senior naval officer present in command, or official patrol. In most cases, the commanding officer of the naval vessel will be the individual to grant or deny permission to enter the 100-yard exclusionary zone because he or she will be in the best position to assess the security needs of his or her ship. Additional coordination suggestions will be given full consideration during a cooperative process to develop practical local implementation guidelines.

Comment 3. The Tribes stated that for local Coast Guard and Navy personnel to have the flexibility to accommodate the needs of the Tribes, it is important that the final regulation provide direction to local Coast Guard and Navy personnel to implement measures that allow tribal members access to fishing rights. The Tribes recommended the insertion of the following language as a new paragraph (g) to § 165.2030: ''The Coast Guard, senior naval officer present in command, or the official patrol shall work with affected tribal governments to provide treaty Indian fishers access to usual and accustomed fishing sites within 100 yards of large U.S. naval vessels.''

Response 3. The Coast Guard believes that adding a new paragraph (g) to § 165.2030 of the rule is not necessary or prudent. The rule already has built-in flexibility for addressing Tribal issues. In those instances where the 100-yard exclusionary zone would exclude Tribal fishers from their usual and accustomed grounds, the rule allows Tribal fishers to request permission to enter the zone by contacting the Coast Guard, senior naval officer present in command or the official patrol on VHF–FM Channel 16. After making an on-scene assessment of the naval vessel's security situation relative to any perceived threat, the Coast Guard, senior naval officer present in command or the official patrol would have the

discretion to allow the requestor within 100 yards.

Addition of the language would not be prudent from a security standpoint because the Coast Guard interprets the proposed paragraph (g)'s use of the term ''shall'' as requiring the on-scene Coast Guard or Navy commander to notify the Tribes every time a large naval vessel transit takes place. The Coast Guard does not believe the rule should require coordination when it is not needed or when it would not be prudent from a security perspective. By employing language in the rule that would limit the on-scene commander's ability to use his or her discretion on a case-by-case basis, naval vessels might become vulnerable to one of the threats that naval vessel protection zones were designed to guard against-small boats intent on attacking naval vessels.

The Coast Guard and the Navy will work with the affected Tribes on measures to implement the rule in a way that will allow the Tribes to reach their objectives to the fullest extent possible while accomplishing naval vessel and national security objectives.

Comment 4. The Office of Hawaiian Affairs commented that existing human use activities such as ocean access and fishing should not be restricted spatially or in duration beyond that which is reasonable to provide for the security concerns of the proposed rule.

Response 4. Because this rule does not restrict ocean activities permanently in any location and because the duration of any restrictions on human use activities would be limited to the time period that a large naval vessel is in transit or is anchored or moored, the Coast Guard believes the effect of this rule on the public is minimized. In addition, the rule has several built-in mitigation measures to limit public impact. Vessels that need to pass within 100 yards of a large U.S. naval vessel may contact the Coast Guard, the senior naval officer present in command, or the official patrol on VHF–FM Channel 16 to obtain the necessary permission. And once security concerns permit, the rule encourages the Coast Guard, senior naval officer present in command, or the official patrol to publicize in advance the movement of the naval vessel.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation will restrict access to some areas and regulate speed in other areas, the effect of this regulation will not be significant because: (1) Individual naval vessel protection zones are limited in size; (2) the Coast Guard, senior naval officer present in command, or official patrol may authorize access to the naval vessel protection zone; (3) the naval vessel protection zone for any given transiting naval vessel will only effect a given geographical location for a limited time; and (4) when conditions permit, the Coast Guard, senior naval officer present in command, or the official patrol should give advance notice of all naval vessel movements on VHF–FM channel 16 so mariners can adjust their plans accordingly. Further, the Coast Guard received no comments related to economic impact following implementation of the temporary final rule.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate near or anchor in the vicinity of U.S. naval vessels in the navigable waters of the United States.

This regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) Individual naval vessel protection zones are limited in size; (2) the official patrol may authorize access to the naval vessel protection zone; (3) the naval vessel protection zone for any given transiting naval vessel will only affect a given geographic location for a limited time; and (4) when conditions permit, the Coast Guard, senior naval officer present in command, or the official patrol should give advance notice of all naval vessel movements on VHF–FM channel 16 so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

The Coast Guard received five letters commenting on the proposed rule, three from Indian Tribal Governments in Puget Sound, Washington, one from the Northwest Indian Fisheries Commission and one from the Office of Hawaiian Affairs. They are discussed under ''Comments and Responses.'' The Coast Guard recognizes the Indian Tribes'' rights under the Stevens Treaties. And the Coast Guard is committed to working with the Navy and the Tribal Governments to implement local policies to mitigate the concerns that have been identified. Given the flexibility of the rule to accommodate the special needs of mariners in the vicinity of large naval vessels and the Coast Guard's commitment to working with the Tribes, we have determined that naval vessel security and fishing rights protection need not be incompatible and therefore have determined that this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

We have conducted an analysis for this action according to the Coast Guard National Environmental Policy Act Manual, COMDTINST M16475.1D, which guides Coast Guard compliance with the National Environmental Policy Act of 1969 (NEPA) and have concluded that there are no factors present which would limit the use of Coast Guard Categorical Exclusion (34)(g). Comments from the public were considered prior to approval of a final Categorical Exclusion Determination (CED) documenting our decision to exclude this action from further environmental review. Refer to *Comments and Changes* for a summary of comments received and the Coast Guard's response. Public comments, an environmental checklist and CED for this action are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

Subpart G—Protection of Naval Vessels

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

Authority: 14 U.S.C 91 and 633; 49 CFR 1.45.

2. Add § 165.2030 to read as follows:

§ 165.2030 Pacific Area.

(a) This section applies to any vessel or person in the navigable waters of the United States within the boundaries of the U.S. Coast Guard Pacific Area, which includes the Eleventh, Thirteenth, Fourteenth, and Seventeenth U.S. Coast Guard Districts.

Note to paragraph (a): The boundaries of the U.S. Coast Guard Pacific Area and the Eleventh, Thirteenth, Fourteenth, and Seventeenth U.S. Coast Guard Districts are set out in 33 CFR part 3.

(b) A naval vessel protection zone exists around U.S. naval vessels greater than 100 feet in length overall at all times in the navigable waters of the United States, whether the large U.S. naval vessel is underway, anchored, moored, or within a floating dry dock, except when the large naval vessel is moored or anchored within a restricted area or within a naval defensive sea area.

(c) The Navigation Rules shall apply at all times within a naval vessel protection zone.

(d) When within a naval vessel protection zone, all vessels shall operate at the minimum speed necessary to maintain a safe course, unless required to maintain speed by the Navigation Rules, and shall proceed as directed by the Coast Guard, the senior naval officer present in command, or the official patrol. When within a naval vessel protection zone, no vessel or person is allowed within 100 yards of a large U.S. naval vessel unless authorized by the Coast Guard, the senior naval officer present in command, or official patrol.

(e) To request authorization to operate within 100 yards of a large U.S. naval vessel, contact the Coast Guard, the senior naval officer present in command, or the official patrol on VHF–FM channel 16.

(f) When conditions permit, the Coast Guard, senior naval officer present in command, or the official patrol should:

(1) Give advance notice on VHF–FM channel 16 of all large U.S. naval vessel movements;

(2) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of a large U.S. naval vessel in order to ensure a safe passage in accordance with the Navigation Rules; and

(3) Permit commercial vessels anchored in a designated anchorage area to remain at anchor when within 100 yards of passing large U.S. naval vessels; and

(4) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of a moored or anchored large U.S. naval vessel with minimal delay consistent with security.

Note to paragraph (f): The listed actions are discretionary and do not create any additional right to appeal or otherwise dispute a decision of the Coast Guard, the senior naval officer present in command, or the official patrol.

Dated: May 23, 2002.

E.R. Riutta,

Vice Admiral, U.S. Coast Guard, Commander, Coast Guard Pacific Area.

[FR Doc. 02–13964 Filed 6–3–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–061]

RIN 2115–AA97

Safety Zone; Charles' Engagement Fireworks Display, Black Point, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks display located in Long Island Sound off shore of Black Point, CT. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Long Island Sound.

DATES: This rule is effective from 9:30 p.m. on June 7, 2002, until 10:30 p.m. on June 8, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–061) and are available for inspection or copying at Coast Guard Group/Marine Safety Office, 120 Woodward Ave., New Haven, CT 06512, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BM2 R. L. Peebles, Marine Events Petty Officer, Coast Guard Group/MSO Long Island Sound at (203) 468–4408.

SUPPLEMENTARY INFORMATION

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and for making the rule effective less than 30 days following publication. An NPRM was considered unnecessary because the fireworks display is a local event that will have minimal impact on the waterway. The zone is only in effect for one hour and vessels can be given permission to transit the zone during all but about 15 minutes of this time. Vessels may transit around the zone at all times. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Background and Purpose

The Coast Guard is establishing a temporary safety zone in the waters of Long Island Sound off shore of Black Point, CT. This safety zone encompasses all waters of Long Island Sound within an 800-foot radius of approximate position 41°17′50″ N, 072°12′06″ W (NAD 1983). The safety zone is intended to protect boaters from the hazards associated with fireworks launched from a barge in the area. This safety zone covers the minimum area needed and imposes the minimum restrictions necessary to ensure the protection of all vessels.

Discussion of Rule

The safety zone is for a fireworks display in Long Island Sound sponsored by Mr. Wade Thompson. The safety zone will be in effect from 9:30 p.m. to 10:30 p.m. on June 7, 2002. The safety zone encompasses all waters of Long Island Sound within an 800-foot radius of approximate position 41°17′50″ N, 072°12′06″ W (NAD 1983).

Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts. Marine traffic will be allowed to transit around the safety zone at all times. Vessels will not be precluded from mooring at or getting underway from recreational or commercial piers in the vicinity of the zone. No vessel may enter the safety zone without permission from the Captain of the Port, Long Island Sound.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, the opportunity for vessels to transit around the zone during the event, the ability of vessels to moor at or get underway from commercial or recreational piers in the vicinity of the zone, and the advance notifications that will be made.

The size of this safety zone was determined using National Fire Protection Association and the Captain of the Port Long Island Sound Standing Orders for 8-inch mortars fired from a barge combined with the Coast Guard's knowledge of tide and current conditions in the area.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Long Island Sound during the times this zone is activated.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: it is a local event with minimal impact on the waterway, vessels may still transit around the zone during the event, the zone is only in effect for one hour and vessels can be given permission to transit the zone except for all but about 15 minutes during this time. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Before the effective period, public notifications will be made via Local Notice to Mariners and Marine Information Broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact BM2 Ryan Peebles, in the Operations at Coast Guard Group/Marine Safety Office Long Island Sound, CT, at (203) 468–4408.

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

Regulation

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

Part 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. From 9:30 p.m. on June 7, 2002, until 10:30 p.m. on June 8, 2002, add temporary § 165.T01–061 to read as follows:

§ 165.T01–061 Safety Zone; Charles' Engagement Fireworks Display, Black Point, CT.

(a) *Location.* The following area is a safety zone: All waters of Long Island Sound within an 800-foot radius of the fireworks barge in approximate position 41°17′50″ N, 072°12′06″ W (NAD 1983).

(b) *Enforcement times and dates.* This section will be enforced from 9:30 p.m. until 10:30 p.m. on June 7, 2002. In the event of inclement weather on June 7, 2002, this rule will be in enforced from 9:30 p.m. until 10:30 p.m. on June 8, 2002.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) No vessels will be allowed to transit the safety zone without the permission of the Captain of the Port, Long Island Sound.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 22, 2002.

J.J. Coccia,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 02–13970 Filed 6–3–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 264–0346a; FRL–7219–2]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from surface cleaning and degreasing. We are approving the local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 5, 2002 without further notice, unless EPA receives adverse comments by July 5, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95812. Ventura County Air Pollution Control

District, 669 County Square Dr., 2nd FL., Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

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

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C. Public comment and final action.
III. Background Information
Why was this rule submitted?
IV. Administrative Requirements

I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
VCAPCD	74.6	Surface Cleaning and Degreasing	01/08/02	03/15/02

On May 7, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

On December 11, 2000, EPA finalized limited approval and limited disapproval of a previous version of this rule. VCAPCD adopted the revisions to this rule on January 8, 2002, and CARB submitted it to us on March 15, 2002. We are acting on the revised version of this rule.

C. What Is the Purpose of the Submitted Rule?

Rule 74.6 limits surface cleaning and degreasing activities performed with solvents containing VOCs. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating This Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see sections 182(a)(2)(A) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The VCAPCD regulates an ozone nonattainment area (*see* 40 CFR part 81), so Rule 74.6 must fulfill RACT.

Guidance and policy document that we used to define specific enforceability and RACT requirements include the following:

1. Control of Volatile Organic Emissions from Solvent Metal Cleaning (November 1977).

2. Issue Relating to VOC Regulation, Cut Points, Deficiencies, and Deviations (the ''Blue Book''), U.S. EPA, May 25, 1988.

3. Determination of Reasonably Available Control Technology and Best Available Control Technology for Organic Solvent Cleaning and Degreasing Operations (July 18, 1991).

B. Does This Rule Meet the Evaluation Criteria?

We believe this rule is consistent with relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation. In particular, the revisions to this rule adequately address the deficiencies identified in our December 11, 2000 limited disapproval.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval and we therefore are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by July 5, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect, and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 5, 2002. This action will incorporate this rule into the federally enforceable SIP.

III. Background Information

Why Was This Rule Submitted?

NO_X and VOC help produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency NO_X rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves the state rules 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 August 5, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: May 13, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(297) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(297) New and amended regulations for the following APCDs were submitted on March 15, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Ventura County Air Pollution Control District.

(*1*) Rule 74.6, adopted on January 8, 2002.

* * * * *

[FR Doc. 02–13798 Filed 6–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7222–5]

RIN 2060–AK07

Regulation of Fuels and Fuel Additives: Modifications to Reformulated Gasoline Covered Area Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In today's final action, EPA is making several minor modifications to its reformulated gasoline (RFG) regulations to reflect changes in the covered areas for the federal RFG program, and to delete obsolete language and clarify existing language in the provisions listing the federal RFG covered areas. These changes include: Deleting the seven southern counties in Maine from the RFG covered areas list, reflecting their opt-out of the RFG program as of March 10, 1999; adding the Sacramento Metro and San Joaquin Valley nonattainment areas to the list of RFG covered areas, reflecting the Sacramento Metro Area's inclusion in the RFG program as of June 1, 1996 and the San Joaquin Valley Area's inclusion in the RFG program on December 10, 2002; and deleting the text which extended the RFG opt-in provisions to all ozone nonattainment areas including previously designated ozone nonattainment areas, reflecting a court decision in January, 2000, which invalidated this language. This direct final action also makes certain other minor changes in the provisions listing the RFG covered areas for purposes of clarification.

DATES: This direct final rule is effective on August 5, 2002, without further notice, unless EPA receives substantive adverse comments by July 5, 2002. If substantive adverse comments are received, EPA will publish a timely

withdrawal of the direct final rule in the **Federal Register** and inform the public that this direct final rule will not take effect.

ADDRESSES: Comments should be mailed (in duplicate if possible) to John Brophy, Office of Transportation and Air Quality (mail code 6406J), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, and to the following docket address: Docket A–2001–32, Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, in room M–1500 Waterside Mall. Materials relevant to today's rulemaking have been placed in the Docket A–2001–32 at the docket address \saves\rules.xmllisted above, and may be inspected on business days from 8 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material.

Materials relevant to today's rulemaking regarding the removal of the seven Maine counties from the federal RFG program are also available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA–New England, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333. For further information, contact Robert C. Judge at (617) 918–1045.

Materials relevant to today's rulemaking regarding the self-executing change in status of the Sacramento Metro and San Joaquin Valley nonattainment areas are also available for inspection during normal business hours in the Air Docket, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. This rule and the Technical Support Documents for the proposed actions are also available in the air programs section of EPA Region 9's website, *http://www.epa.gov/region09/air.* Interested persons may make an appointment with Ms. Virginia Peterson at (415) 744–1265, to inspect the docket between 9 a.m. and 4 p.m. A reasonable fee may be charged for copying docket material.

There are several other dockets that may also contain related materials of interest to the public:

Materials relevant to EPA's approval of a State Implementation Plan (SIP) revision submitted by the State of Maine are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M–1500, 401 M Street, (Mail Code 6102), SW., Washington, DC; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333. For further information, contact Robert C. Judge at (617) 918–1045.

Materials regarding the reclassification of the Sacramento Metro Area as a ''Severe'' ozone nonattainment area are in Docket A–94–09. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, in room M–1500 Waterside Mall. Documents may be inspected on business days from 8 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material.

Materials regarding the reclassification of the San Joaquin Valley Area as a ''Severe'' ozone nonattainment area are available for inspection during normal business hours in the Air Docket, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. This rule and the Technical Support Documents for the proposed actions are also available in the air programs section of EPA Region 9's website, *http://www.epa.gov/region09/air.* Interested persons may make an appointment with Ms. Virginia Peterson at (415) 744–1265, to inspect the docket between 9 a.m. and 4 p.m. A reasonable fee may be charged for copying docket material.

Materials regarding the extension of the RFG opt-in provisions to all ozone nonattainment areas including previously designated ozone nonattainment areas, and the January, 2000, court decision, are in Docket A–96–30. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, in room M–1500 Waterside Mall. Documents may be inspected on business days from 8 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material.

Materials relevant to the removal of the Phoenix area from the federal RFG program are in Docket A–98–23. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, in room M–1500 Waterside Mall. Documents may be inspected on business days from 8 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: John Brophy, U.S. Environmental Protection Agency, Office of Air and Radiation, 1200 Pennsylvania Ave., NW (Mail Code 6406J), Washington, DC 20460, (202) 564–9068, e-mail address: *brophy.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

Availability on the Internet

Copies of this final rule are available electronically from the EPA Internet Web site. This service is free of charge, except for your existing cost of Internet connectivity. An electronic version is made available on the day of publication on the primary Internet site listed below. The EPA Office of Transportation and Air Quality will also publish this final rule on the secondary Web site listed below.

http://www.epa.gov/docs/fedrgstr/EPA-AIR/ (either select desired date or use Search feature),

http://www.epa.gov/otaq/ (look in What's New or under the specific rulemaking topic).

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

Regulated Entities

Entities potentially regulated by this action are those which produce, import, supply or distribute gasoline. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Refiners, importers, oxygenate blenders, terminal operators, distributors, retail gasoline stations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business would have been regulated by this action, you should carefully examine the list of areas covered by the reformulated gasoline program in § 80.70 of Title 40 of the Code of Federal Regulations (CFR). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Opt-Out of Maine Nonattainment Areas

EPA's reformulated gasoline (RFG) regulations include a list of geographic areas that are covered areas for purposes of the RFG program. 40 CFR 80.70. Section 80.70(j) identifies the nonattainment areas that opted into the RFG program at the beginning of the program. Seven Maine counties opted into the RFG program at that time and are listed in § 80.70(j)(5). Section 80.70(l) provides that, upon the effective date for removal under § 80.72(a), a geographic area that has opted out of the RFG program shall no longer be considered a covered area.

On March 5, 1999, EPA approved an opt-out petition submitted by the Governor of Maine, and the seven Maine counties of Androscoggin; Cumberland; Kennebec; Knox; Lincoln; Sagadahoc; and York were removed from the RFG program effective March 10, 1999.[1] With today's direct final rule, EPA is amending § 80.70(j)(5) of EPA's RFG regulations by removing the seven listed Maine counties to reflect that they are no longer covered areas in the federal RFG program.

II. Inclusion of Sacramento and San Joaquin Valley as Covered Areas

Under Clean Air Act section 211(k)(10)(D), any ozone nonattainment area that is reclassified as a Severe ozone nonattainment area becomes an RFG covered area effective one year after its reclassification. 42 U.S.C. 7545(k)(10)(D).

Effective June 1, 1995, the Sacramento, California, ozone nonattainment area was reclassified from a Serious to a Severe ozone nonattainment area. 60 FR 20237 (April 25, 1995). The Sacramento ozone nonattainment area, therefore, became an RFG covered area as of June 1, 1996.

Effective December 10, 2001, the San Joaquin Valley, California, ozone nonattainment area was reclassified from a Serious to a Severe ozone nonattainment area.[2] The San Joaquin Valley ozone nonattainment area, therefore, will become an RFG covered area as of December 10, 2002.

In today's direct final rule, EPA is amending § 80.70 to reflect that the Sacramento nonattainment area became a covered area in the federal RFG program by operation of law on June 1, 1996 and that the San Joaquin Valley nonattainment area will become a covered area in the federal RFG program by operation of law on December 10, 2002.[3] These amendments, in combination with the amendment described in Section I above, will bring the regulations into conformity with the existing status of ''covered areas'' in the RFG program.

III. Deletion of Opt-In Language

Section 80.70(k) of the RFG rule as originally promulgated provided that any area classified as a Marginal, Moderate, Serious, or Severe ozone nonattainment area may be included as an RFG covered area (i.e, ''opt-in'') upon petition of the governor of the state in which the area is located.[4] EPA subsequently modified this language to provide that any area ''currently or previously designated as a nonattainment area for ozone'' may be included as an RFG covered area. 63 FR 52094 (September 29, 1998). This modification was subsequently challenged in the United States Court of Appeals for the District of Columbia Circuit, which found that EPA lacked authority to promulgate this modification. *American Petroleum Institute* v. *EPA.*, 198 F.3d 275 (D.C. Cir. 2000). Therefore, with today's direct final rule, EPA is amending § 80.70 to remove the text which extended the opt-in provisions and reinstate the language of this section as originally promulgated.

IV. Additional Changes to § 80.70

Today's rule revises the introductory text of § 80.70(j) to distinguish the nonattainment areas that have opted into the RFG program from those that are required to be in the program under the Clean Air Act. In addition, today's rule revises the text of sections 80.70(l) and (n) to make these provisions clearer. These minor revisions are strictly organizational and do not change the substance or intent of these provisions in any way. Today's rule also removes the current provisions of § 80.70(m) relating to Phoenix as an opt-in covered area, since the Phoenix area is no longer a covered area as of June 10, 1998.[5] The provisions for the Sacramento and San Joaquin Valley covered areas, described above, are included in a new § 80.70(m).

V. Public Participation

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This rule will be effective August 5, 2002, without further notice unless the Agency receives adverse comments by July 5, 2002. If EPA receives substantive adverse comments on this action, we will publish in the **Federal Register** a timely withdrawal of the direct final rule informing the public that this direct final rule will not take effect. EPA considers each element of today's direct final rule to be independent and severable, therefore, if we receive adverse comment we will withdraw only those elements (an amendment, section or paragraph) of this action that are addressed by such comments.

EPA is publishing separately, in the ''Proposed Rules'' section of today's **Federal Register**, a notice of proposed rulemaking that incorporates each of the regulatory amendments included in this direct final rule. In the event that EPA receives adverse comment on all or part of this direct final rule, we will proceed according to ordinary notice and comment rulemaking procedures. We will address all adverse public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

Today's amendments to the CFR reflect changes that have occurred in separate actions in accordance with EPA's regulations and the CAA. This rule is not itself an approval of Maine's or Arizona's opt-out request—Agency

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[1] Published elsewhere in the Notice section of today's Federal Register EPA announces and describes its approval of Maine's opt-out petition according to the procedures set forth in 40 CFR 80.72. These regulatory provisions were established pursuant to authority under sections 211(c) and (k) and 301(a) of the Clean Air Act to provide criteria and general procedures for a state to opt-out of the RFG program where the state had previously voluntarily opted into the program. See 61 FR 35673 (July 8, 1996); 62 FR 54552 (October 20, 1997).

[2] In a final rulemaking, EPA took action to change the boundary for the San Joaquin Valley serious ozone nonattainment area by separating out the eastern portion of Kern County into its own nonattainment area. *See* 66 FR 56483 (November 8, 2001). EPA extended the attainment deadline for the new East Kern County serious ozone nonattainment area from November 15, 1999 to November 15, 2001.

[3] In a Notice of Proposed Rulemaking published on July 11, 1997, EPA proposed to update the list of RFG covered areas in § 80.70 to include the Sacramento nonattainment area. *See* 62 FR 37338. In that notice EPA proposed regulatory text describing the Sacramento covered area by its geographic boundaries, however, in today's final rule we are instead describing the Sacramento covered area by reference to the geographic description of its nonattainment area boundaries as specified in 40 CFR part 81, subpart C. We note also that the Sacramento and San Joaquin Valley areas currently receive gasoline that complies with California's State reformulated gasoline (CaRFG) program, and that such gasoline is generally covered by EPA enforcement exemptions. *See* 64 FR 49992 (Sept. 15, 1999); 40 CFR 80.81.

[4] 59 FR. 7716 (February 16, 1994).

[5] Published on August 11, 1998, in the **Federal Register** (at 63 FR 43044) is a public announcement of EPA's approval of the Arizona Governor's petition and the effective date of the Phoenix opt-out. The opt-out effective date for the Phoenix area was June 10, 1998.

action approving those petitions occurred earlier in separate administrative proceedings. Similarly, neither the reclassification of the Sacramento and San Joaquin Valley nonattainment areas, nor the self-executing change in status of these areas to RFG ''covered areas,'' are dependent on today's action. EPA is simply modifying the list of covered areas in the RFG regulations, 40 CFR 80.70, so the list will reflect EPA's earlier approval of the Maine and Arizona opt-out requests, and the self-executing change in the status of the Sacramento and San Joaquin Valley nonattainment areas. Thus, the various elements of today's direct final rule involve little or no exercise of agency discretion. Rather today's actions essentially are ministerial regulatory amendments.

VI. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Today's rule merely amends EPA's regulations to reflect the current status of covered areas within the RFG program. These various changes in status are not dependant on today's rulemaking, but have occurred (or will occur) as the result of separate agency action and self-executing statutory provisions. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing [*RFG*] regulations [CFR citation—*40 CFR part 80, Subparts D, E an F,*] under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0277 (EPA ICR No. 1591.13).

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.* Include the ICR and / or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, Apr. 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it does

not establish an environmental standard intended to mitigate health or safety risks.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. This final rule simply makes several minor modifications in the regulations to reflect changes in the covered areas for the federal RFG program, and to delete obsolete language and clarify existing language in the provisions listing the federal RFG covered areas. Thus, Executive Order 13132 does not apply to this rule.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. This final rule simply makes several minor modifications in the regulations to reflect changes in the covered areas for the federal RFG program, and to delete obsolete language and clarify existing language in the provisions listing the federal RFG covered areas. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Congressional Review

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(a).

H. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A firm having no more than 1,500 employees and no more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks; [6] according to Small Business Administration (SBA) size standards established under the North American Industry Classification System (NAICS); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Today's rule revises the introductory text of § 80.70(j) to distinguish the nonattainment areas that have opted into the RFG program from those that are required to be in the program under the Clean Air Act. In addition, today's rule revises the text of § 80.70(l) and (n) to make these provisions clearer. These minor revisions are strictly organizational and do not change the substance or intent of these provisions in any way. Today's rule also removes the current provisions of § 80.70(m) relating to Phoenix as an opt-in covered area, since the Phoenix area is no longer a covered area as of June 10, 1998. Published on August 11, 1998, in the **Federal Register** (at 63 FR 43044) is a public announcement of EPA's approval of the Arizona Governor's petition and the effective date of the Phoenix opt-out. The opt-out effective date for the Phoenix area was June 10, 1998. The provisions for the Sacramento and San Joaquin Valley covered areas, described above, are included in a new § 80.70(m).

Today's amendments to the CFR reflect changes that have occurred in separate actions in accordance with EPA's regulations and the CAA. This rule is not itself an approval of Maine's or Arizona's opt-out request—Agency action approving those petitions occurred earlier in separate administrative proceedings. Similarly, neither the reclassification of the Sacramento and San Joaquin Valley nonattainment areas, nor the self-executing change in status of these areas to RFG ''covered areas,'' are dependent on today's action. EPA is simply modifying the list of covered areas in the RFG regulations, 40 CFR 80.70, so the list will reflect EPA's earlier approval of the Maine and Arizona opt-out requests, and the self-executing change in the status of the Sacramento and San Joaquin Valley nonattainment areas. Thus, the various elements of today's direct final rule involve little or no exercise of agency discretion. Rather today's actions essentially are ministerial regulatory amendments.

I. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the

[6] Capacity includes owned or leased facilities as well as facilities under a processing agreement or an agreement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder form either crude oil or bona fide feedstocks.

Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's rule does not have tribal implications and will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This final rule simply makes several minor modifications in the regulations to reflect changes in the covered areas for the federal RFG program, and to delete obsolete language and clarify existing language in the provisions listing the federal RFG covered areas. Thus, Executive Order 13175 does not apply to this rule.

J. Executive Order 13211 (Energy Effects)

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

VII. Statutory Authority

The Statutory authority for the action today is granted to EPA by sections 211(c) and (k), 301, and 307 of the Clean Air Act, as amended; 42 U.S.C. 7545(c) and (k), 7601, 7607; and 5 U.S.C. 553(b).

VIII. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 5, 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 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 23, 2002.

Christine Todd Whitman,

Administrator.

40 CFR part 80 is amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.70 is amended by revising the paragraph (j) introductory text, removing and reserving paragraph (j)(5), revising paragraphs (k), (l), and (m) and removing paragraph (n) to read as follows:

§ 80.70 Covered areas.

* * * * *

(j) Any other area classified under 40 CFR part 81, subpart C as a marginal, moderate, serious, or severe ozone nonattainment area may be included as a covered area on petition of the Governor of the State in which the area is located. The ozone nonattainment areas listed in this paragraph (j) opted into the reformulated gasoline program prior to the start of the reformulated gasoline program. These areas are covered areas for purposes of subparts D, E, and F of this part. The geographic extent of each covered area listed in this paragraph (j) shall be the nonattainment area boundaries as specified in 40 CFR part 81, subpart C.

* * * * *

(k) The ozone nonattainment areas included in this paragraph (k) have opted into the reformulated gasoline program since the beginning of the program, and are covered areas for purposes of subparts D, E, and F of this part. The geographic extent of each covered area listed in this paragraph (k) shall be the nonattainment area boundaries as specified in 40 CFR part 81, subpart C.

(1) The St. Louis, Missouri, ozone nonattainment area is a covered area beginning June 1, 1999. The prohibitions of section 211(k)(5) of the Clean Air Act apply to all persons in the St. Louis, Missouri, covered area, other than retailers and wholesale purchaser-consumers, beginning May 1, 1999. The prohibitions of section 211(k)(5) of the Clean Air Act apply to retailers and wholesale purchase-consumers in the St. Louis, Missouri, area beginning June 1, 1999.

(2) [Reserved]

(l) Upon the effective date for removal of any opt-in area or portion of an opt-in area included in an approved petition under § 80.72(a), the geographic area covered by such approval shall no longer be considered a covered area for purposes of subparts D, E, and F of this part.

(m) Effective one year after an area has been reclassified as a Severe ozone nonattainment area under section 181(b) of the Clean Air Act, such Severe area shall also be a covered area under the reformulated gasoline program. The ozone nonattainment areas included in this paragraph (m) were reclassified as Severe ozone nonattainment areas, and are covered areas for purposes of subparts D, E, and F of this part. The geographic extent of each covered area listed in this paragraph (m) shall be the nonattainment area boundaries as specified in 40 CFR part 81, subpart C.

(1) The Sacramento, California, ozone nonattainment area, was redesignated as a Severe ozone nonattainment area effective June 1, 1995, and is a covered area for purposes of subparts D, E, and F of this part beginning on June 1, 1996.

(2) The San Joaquin Valley, California, ozone nonattainment area was redesignated as a Severe ozone nonattainment area effective December 10, 2001, and is a covered area for purposes of subparts D, E, and F of this part beginning on December 10, 2002.

[FR Doc. 02–13976 Filed 6–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144 and 146

[FRL–7221–1]

Notice of Final Decision on Motor Vehicle Waste Disposal Wells in EPA Region 8; Underground Injection Control (UIC) Class V Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final decision.

SUMMARY: Today the Environmental Protection Agency's Region 8 Office in Denver, Colorado, is announcing a decision under which each motor vehicle waste disposal well in Colorado, Montana, or South Dakota (regardless of whether it is in Indian country) or in Indian country in North Dakota, Utah, or Wyoming must either be closed or covered by a Class V Underground Injection Control (UIC) permit application no later than January 1, 2007. The term ''Indian country'' as used in this document is defined in 18 United States Code Section 1151.

DATES: This decision is effective June 4, 2002.

ADDRESSES: The decision and supporting documents, including public comments, are available for review from 8 am to 5 pm on working days at the U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466.

FOR FURTHER INFORMATION CONTACT: Douglas Minter (8P–W–GW), EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Phone: 800–227–8917, extension 6079 or 303–312–6079. E-mail: *minter.douglas@epa.gov.*

SUPPLEMENTARY INFORMATION: Motor vehicle waste disposal wells typically are septic systems or dry wells that can receive or have received waste fluids from floor drains or shop sinks in public or private facilities that service cars, trucks, buses, aircraft, boats, trains, snowmobiles, construction and farm machinery, or other motor vehicles.

Today's decision applies to every motor vehicle waste disposal well that became operational or for which construction had begun by April 5, 2000, if that well is (1) anywhere in Colorado, Montana, or South Dakota, in Indian country or not, or (2) in Indian country in North Dakota, Utah, or Wyoming.

Today's decision does not apply to wells for which construction began after April 5, 2000. Since that date, new or converted motor vehicle waste disposal wells have been prohibited (unless construction began before that date). *See* the **Background** section below for more details.

1. Background

Under the authority of part C of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300h *et seq.*, the United States Environmental Protection Agency (''EPA'') regulates underground injection of fluids into wells. The purpose of EPA's UIC program is to prevent underground injection that may contaminate underground sources of drinking water (USDW). (42 U.S.C. 300h(b) and (d).) A ''USDW'' is an aquifer, or its portion, that has not been found by the EPA to be an ''exempted aquifer'' and that (1) supplies any public water system, or (2) contains a sufficient quantity of ground water to supply a public water system and either currently supplies drinking water for human consumption or contains fewer than 10,000 milligrams per liter (mg/l) of dissolved solids. (40 CFR 144.3.)

There are five classes of injection wells. Motor vehicle waste disposal wells are considered Class V wells. (40 CFR 144.80, 144.81, and 146.5.) All owners or operators of Class V wells must comply with various requirements, including submission of inventory information to State or EPA regulatory agencies prior to operating any Class V well. (See 40 CFR part 144, especially §§ 144.26 and 144.83.)

UIC programs are administered either by EPA or by states whose UIC programs EPA has approved. In Region 8, EPA has authorized North Dakota, Utah, and Wyoming to administer Class V UIC programs. For Indian country in these three states, however, EPA directly administers the Class V UIC program. EPA also directly administers the Class V UIC program throughout Colorado, Montana, South Dakota (*i.e.,* in both Indian country and elsewhere).

On December 7, 1999, EPA revised its regulations for Class V wells. (64 FR 68546.) Effective April 5, 2000, all new motor vehicle waste disposal wells were prohibited. (40 CFR 144.88(a)(2).) Motor vehicle waste disposal wells already in operation or under construction by that date are to be closed or permitted, with the final deadlines for closure or permit applications depending on a determination of the susceptibility of the nearby groundwater to contamination. (40 CFR 144.87 and 144.88(b).)

The areas with greatest priority for protection are known as ''Ground Water Protection Areas'' or ''GWPAs.'' States are required to delineate and assess GWPAs. (*See* section 1453 of the SDWA and 40 CFR 144.86.) An example of a GWPA is a recharge area of an aquifer that serves a ''community'' or ''non-transient non-community'' public water supply system. (*See* 40 CFR 144.86.) Any motor vehicle waste disposal well in a GWPA must either close or be covered by a permit application within one year of the state's completion of a local source water assessment, with certain allowances for extensions relating to the timing of the state delineation and assessment. (*See* 40 CFR 144.87(b) and 144.88(b)(1)(i) and (v).)

States and the EPA may also identify other areas where groundwater protection is important. These additional areas are known as ''Other Sensitive Ground Water Areas'' or ''OSGWAs.'' Any motor vehicle waste disposal well in any designated OSGWA must either close or be covered by a permit application no later than January 1, 2007, again with certain allowances for extensions. (*See* 40 CFR 144.86(g), 144.87(c), and 144.88(b)(1)(ii) and (vi).)

States and the EPA are not required to designate ''OSGWAs.'' If no OSGWAs are designated in a particular state, then all motor vehicle waste disposal wells in that state are to close or be covered by a permit application no later than January 1, 2007 (or the extended deadline, if any). (40 CFR 144.87(f).) If, however, some areas are designated as OSGWAs and others are not, then only those wells within OSGWAs are subject to this particular deadline.

2. Today's Decision and Its Consequences

The purpose of this document is to announce that EPA Region 8 has decided not to designate any OSGWAs. The consequence of this decision is that no later than January 1, 2007, each motor vehicle waste disposal well that is in Colorado, Montana, or South Dakota (regardless of whether it is in Indian country) or that is in Indian country in North Dakota, Utah, or Wyoming must close or be covered by either a permit or permit application.

If EPA Region 8 had decided to designate any OSGWA(s), then any motor vehicle waste disposal well outside of the designated OSGWA(s) would not have been subject to the final January 1, 2007 deadline.

There is no provision in EPA's regulations for extending the January 1, 2007 deadline in jurisdictions where EPA directly administers the Class V UIC program. The extension provisions apply only to state-administered programs, as described in 40 CFR 144.87(c). Consequently, the January 1, 2007 deadline is a final deadline.

To obtain a permit to operate a motor vehicle waste disposal well, an owner or operator must demonstrate, among other things, that the well's waste stream does not contain contaminants in concentrations greater than the Maximum Contaminant Levels (MCLs) established in 40 CFR part 141 or Health Advisory Limits. A Health Advisory Limit (HAL) is an estimate of an acceptable drinking water level for a chemical substance based on health effects information. HALs can be used by UIC programs to establish enforceable limits for contaminants for which no primacy MCL has been established. HAL information can be obtained from EPA at the address given above in the section entitled **FOR FURTHER INFORMATION CONTACT.**

Permits usually require owners or operators of motor vehicle waste disposal wells to sample and analyze their waste streams on a quarterly basis. If a well's owner or operator does not obtain a permit for authorization to inject, then the well must be closed in a manner that cannot allow any waste fluids to be released into the ground, with thirty days' advance notice to Region 8 of the closure. (40 CFR 144.88(b)(1)(vii).) More details on the

permit application process are available from EPA upon request. (Please see the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.)

In some cases, motor vehicle waste disposal well owners or operators may be required to close their wells or apply for permits before January 1, 2007. For example, if a Class V well is in a designated GWPA, it must be closed or covered by a permit application within one year of the completion of a source water assessment, as mentioned above. As another example, if EPA finds that a well may cause a violation of a National Primary Drinking Water Regulation at 40 CFR part 141 or may be otherwise adversely affecting the health of persons, then EPA may require the owner or operator of the well to apply for a permit application or to close the well by a date to be specified by Region 8. (*See* 40 CFR 144.12(c) and (d).) Under no circumstance would a well's location in a GWPA or an OSGWA (had Region 8 decided to designate any) postpone a more immediate closure/permit application deadline specified by Region 8.

3. EPA Region 8's Public Participation Process

EPA Region 8 has made extensive efforts to educate and consult with the public, including Indian tribes, concerning the requirements for motor vehicle waste disposal wells and Region 8's options for designating OSGWAs. The Region's efforts are summarized below. The following does not include owner/operator-specific compliance assistance, inspections, enforcement actions, and other efforts that also have served to disseminate information about the new requirements.

March, 2000: Region 8 directly mailed information on the new/existing Class V requirements to sanitarians affiliated with all county health departments in Colorado. County sanitarians are responsible for ensuring that on-site waste water (*e.g.*, septic) systems in their jurisdiction are constructed and used properly.

April, 2000: At the Spring Sanitarians' Educational Conference in Helena, Montana, Region 8 presented a summary of the new/existing Class V requirements.

April, 2000: Region 8 staff presented a summary of the new/existing Class V requirements to the Montana Department of Environmental Quality (DEQ) in Helena, Montana. The DEQ is responsible for implementing the source water assessment program and other ground water protection programs within Montana.

July, 2000: Region 8 presented a summary of the new/existing Class V requirements at the National Environmental Health Association's Annual Education Conference in Denver, Colorado. This conference drew sanitarians from Region 8 and other parts of the country.

August, 2000: Region 8 discussed the new Class V requirements with representatives from the Colorado Department of Public Health and Environment (DPH&E) and Montana DEQ, during the State UIC/Source Water Directors' Meeting in Glenwood Springs, Colorado.

October, 2000: Region 8 discussed the new Class V requirements with representatives of the South Dakota Department of Environment and Natural Resources (DENR) in Pierre, South Dakota. The DENR is responsible for implementing the source water assessment program and other ground water protection programs within South Dakota.

March, 2001: Region 8 sent a letter to all Tribal Chairpersons and Tribal Environmental Program Directors in Indian country in Region 8 describing Region 8's implementation options. The letter included a draft proposal for applying the closure/permitting requirements throughout all Indian country in Region 8.

April, 2001: Region 8 invited potential stakeholders (including motor vehicle-related industry groups) in South Dakota to participate in upcoming workshops on the new/existing Class V requirements. The invitation letter described Region 8's draft proposal to apply the closure/permitting requirements throughout South Dakota.

May, 2001: In Rapid City and Huron, South Dakota, Region 8 presented a summary of the new/existing Class V requirements to federal, state, county, municipal, nonprofit, and private citizen stakeholders. Region 8 described its implementation options and its draft proposal to apply the closure/permitting requirements throughout South Dakota. It also received comments from the public on the draft proposal.

July, 2001: In Fort Yates, North Dakota, Region 8 presented a summary of the new/existing Class V requirements to Tribal Environmental Program Directors attending a Regional Operations Committee meeting, describing Region 8's implementation options and its draft proposal for applying the closure/permitting requirements throughout Indian country in Region 8.

September/October, 2001: Region 8 published a notice announcing its proposal for implementing the motor vehicle waste disposal well permitting/closure requirements on a state and Indian countrywide basis, as described below.

October, 2001: Region 8 discussed the new Class V requirements with representatives from the Colorado DPH&E, Montana DEQ, and the South Dakota DENR during the State UIC/Source Water Directors Meeting held in Lead, South Dakota.

October, 2001: Region 8 presented a summary of the new/existing Class V requirements and Region 8's previously-published formal proposal in Helena, Montana, to General Motors' automobile facility dealerships in Montana.

4. Public Notice of Proposal

In late September and early October of 2001, Region 8 formally announced that it was proposing to implement the 1999 Class V requirements throughout Colorado, Montana, and South Dakota, and only in Indian country in the other three Region 8 states (*i.e.*, North Dakota, Utah, and Wyoming). Region 8 made its announcement by publishing a two-page notice in nineteen newspapers throughout Region 8. It also mailed this notice directly to over 300 potential stakeholders in the Region and posted it on Region 8's Web site.

In this notice, Region 8 made a finding that motor vehicle waste disposal wells are located predominately in unsewered areas with permeable soils, where local populations depend on ground water as a source of drinking water or could do so in the future. Region 8 also found that for wells located in areas with more impermeable soils, motor vehicle wastes (*e.g.*, solvents) can migrate downward through natural (*e.g.*, fractures) and artificial (*e.g.*, abandoned wells) pathways and indirectly contaminate USDWs. Therefore, Region 8 proposed implementing a closure/permitting requirement throughout the area in which it directly implements the Class V program as the most prudent and equitable way to achieve its regulatory goal of protecting all USDWs for current and future uses.

Neither the Safe Drinking Water Act nor any EPA regulation requires Region 8 to publish a formal notification of its proposed or final decision not to delineate OSGWAs. If Region 8 does not designate any OSGWAs by January 1, 2004, then the ''default'' closure/permit application deadline is January 1, 2007. (*See* 40 CFR 144.87(c).) Thus, as of January 1, 2004, any member of the regulated community could have learned of the January 1, 2007 deadline by finding out that as of that date Region 8 had designated no OSGWAs. Region 8

has chosen, however, not to let the regulated community wait in this manner. Today's document is intended to publicize and clarify well in advance of the January 1, 2007 deadline that motor vehicle waste disposal wells in areas where Region 8 directly implements the Class V UIC program will need to be closed or covered by permit applications by that time. Region 8 is also taking this opportunity to reiterate its ongoing concerns with disposal of motor vehicle waste fluids. The Region will continue to use its authority under 40 CFR 144.12(c) and (d) to take any appropriate action (including requiring permit applications or well closure, as well as to take an enforcement action) upon finding that any Class V well may cause a violation of a National Primary Drinking Water Regulation or otherwise adversely affect public health.

5. Public Comments and EPA Region 8's Response

In the public notice described above, EPA Region 8 asked any interested member of the public to submit written comments within 30 days. Approximately 20 persons responded by the end of the comment period, speaking at the meetings described above and/or sending letters or electronic correspondence to EPA. The substantive comments that Region 8 interprets as objections to its proposal are summarized below, along with the Region's responses.

Comment: Some USDWs are not at risk from motor vehicle disposal well-related contamination, while others are. There are areas where the ground water is not located near the land surface and/or is underlain by soil and rock formations (*e.g.,* clays and shales) that prevent the downward migration of motor vehicle-related waste fluids into an underlying USDW. Region 8 should delineate OSGWAs only where USDWs are relatively shallow and not overlain by an impermeable formation.

Response: Due to hydrogeologic variability, some USDWs are more vulnerable than others. However, deeper, more confined USDWs are at some risk from motor vehicle disposal well-related contamination. Natural (*e.g.,* fractures) and artificial (*e.g.,* abandoned wells) pathways in soil and rock formations, including clays and shales, can facilitate the downward migration of contaminants. This is particularly true for certain chemicals (*e.g.,* solvents), which are heavier than water and routinely used in motor vehicle-related operations.

In addition to large, well-defined shallow aquifer systems, there are less well-defined shallow aquifer systems that have been or could be used extensively in rural areas for drinking water. While often very limited in areal extent, these aquifers constitute USDWs based on their quality (*i.e.,* less than 10,000 mg/l total dissolved solids) and quantity (*i.e.,* sufficient to supply a public water system, which Region 8's UIC program generally interprets as an aquifer yielding two or more gallons of water per minute). These USDWs include: (1) Fractured rock (*e.g.,* granite, shale, and limestone) aquifers; (2) alluvial sand and gravel aquifers adjacent to small drainages; and (3) limited sand lenses within confining (*e.g.,* shale) formations. While there may be economic or other reasons for these USDWs not to be used for supplying public water systems, it is prudent and in keeping with the purposes of the SDWA for EPA to protect them as drinking water sources for future users and for those who now use existing private wells.

Therefore, Region 8 has concluded that the 1999 Class V requirements affecting existing motor vehicle waste disposal wells should not be restricted to certain geographic areas.

Comment: The proposal would place an economic burden on owners/operators of existing motor vehicle waste disposal wells in rural areas where USDWs are not susceptible to contamination. For example, if an owner or operator installs a holding tank to capture motor vehicle-related wastes, there may be a high price for disposing of these wastes properly, because the nearest facility accepting the waste may be many miles away. As a result, some of these owners/operators could be forced out of business.

Response: Applying the new permitting/closure requirements regardless of facility location should not impose an unreasonable economic burden on owners/operators of motor vehicle waste disposal wells. Having overseen the closure of hundreds of existing motor vehicle waste disposal wells in urban and rural areas over the past 15 years, Region 8 has found that owners/operators have been able to find affordable, alternative methods for managing and disposing of their motor vehicle-related wastes.

Rural facilities often have limited options because the greater distances to a sewer line make connection to a municipal system expensive. However, many motor vehicle-related facilities in rural areas are allowed to discharge into municipal sewer systems, and Region 8 has found that owners/operators are able to afford the costs associated with capturing, pumping, and transporting their wastes to these locally-available systems. These costs also have been affordable due to the small amounts of waste (from occasional drips, leaks, and spills) generated from typical motor vehicle-related operations. In the few instances where larger facilities were found to be generating significant volumes of motor vehicle-related fluid wastes, owners/operators have recycled their wastes or obtained permits requiring injection at levels that would not compromise drinking water standards.

Comment: Committing resources to address existing motor vehicle waste disposal wells in areas where no USDWs are at risk from contamination is not a good use of taxpayers' money. Designating OSGWAs would focus resources on USDWs most susceptible to contamination.

Response: First, in order to designate OSGWAs, Region 8 would need to expend considerable resources to develop a delineation methodology and conduct delineations to support implementation and possible enforcement on a site-by-site basis. Rather than conduct a technically complex and legally defensible exercise, Region 8 believes the idea of designating OSGWAs can be put into practice more efficiently by targeting resources in areas overlying the most vulnerable USDWs. Second, having found over the past 15 years that the majority of motor vehicle waste disposal wells are located in populated areas, where local communities depend on accessible (and vulnerable) ground water as a source of drinking water, Region 8 has made these areas its primary focus for implementation in order to achieve the greatest level of risk reduction with its limited resources.

6. EPA Region 8's Final Implementation Decision

Having reviewed all comments received during the public comment period, Region 8 has concluded that no new or compelling information was received to justify substantive changes to its implementation proposal. Therefore, Region 8 has decided to apply the closure/permitting requirements of the December 7, 1999 revisions to all motor vehicle waste disposal wells throughout the States of Colorado, Montana, and South Dakota (regardless of whether they are in Indian country), and throughout Indian country within North Dakota, Utah, and Wyoming.

In making its final decision, Region 8 considered the following additional factors:

Consistency in Implementation: Nationally, almost all State/EPA UIC programs intend to apply the new Class V requirements state and Indian country-wide. The remaining UIC programs nonetheless expect that all motor vehicle waste disposal wells will be either closed or permitted.

Possible Delay of Source Water Assessment Completion: EPA's 1999 rule states that if all four steps (*i.e.,* inventory, delineation, susceptibility analysis, and public notification) of the assessment process for all applicable public water systems (PWSs) are not completed by a state or tribe by January 1, 2004, the new requirements affecting existing motor vehicle waste disposal wells will apply throughout the relevant state or area of Indian country, absent a formal request for a one-year extension. (40 CFR 144.87(b).) Based on feedback Region 8 has received from state and tribal source water program contacts, it is unlikely that assessments will be completed for all PWSs affected by this rule. This is particularly true in Indian country because tribes are not required to complete this work under the SDWA. Therefore, Region 8 expects that the new requirements will most likely apply across all Region 8 states and areas of Indian country, consistent with today's decision.

Reduced Owner/Operator Liability: EPA and State UIC program inspections and environmental audits conducted by property owners, lenders, and insurers have identified motor vehicle waste disposal wells as an unnecessary and long-term environmental liability. The costs of soil and ground water cleanup have far exceeded the preventive costs of adopting alternatives such as sewer connections, holding tanks, and dry shops. Today's decision will encourage these alternative, more environmentally sound means of managing and disposing of motor vehicle waste fluids.

Dated: May 17, 2002.

Kerrigan G. Clough,

Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, Region 8.

[FR Doc. 02–13699 Filed 6–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0087; FRL–7178–5]

Cyhalofop-butyl; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of cyhalofop (cyhalofop-butyl plus cyhalofop-acid) and the di-acid metabolite in or on rice grain and rice straw. Dow AgroSciences, LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire on June 1, 2007.

DATES: This regulation is effective June 4, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0087, must be received on or before August 5, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0087 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–6224; and e-mail address: miller.joanne@epamail.epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0087. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of April 25, 2001 (66 FR 20808) (FRL–6774–7), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–

170), announcing the filing of a pesticide petition (PP 0F6089) by Dow AgroSciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268. This notice included a summary of the petition prepared by Dow AgroSciences, LLC, theregistrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing tolerances for combined residues of the herbicide cyhalofop-butyl (cyhalofop-butyl, cyhalofop-acid and cyhalofop-diacid) in or on rice grain, rice hull, rice bran and polished rice at 0.03 parts per million (ppm) and rice straw at 8.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of cyhalofop (cyhalofop-butyl plus cyhalofop acid) and the di-acid metabolite in or on rice grain at 0.03 ppm and rice straw at 8.0 ppm. Tolerances are not required for rice processed fractions or for animal commodities. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cyhalofop-butyl are discussed in the following Table 1 and Table 2 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—ACUTE TOXICITY OF CYHALOFOP-BUTYL TECHNICAL

Guideline No.	Study Type	Results
870.1100	Acute Oral (Rat)	LD_{50} >5000 mg/kg (limit test) There was no evidence of toxicity. Toxicity Category IV
870.1100	Acute Oral (Mice)	LD_{50} >5000 mg/kg (limit test) There was no evidence of toxicity. Toxicity Category IV
870.1200	Acute Dermal (Rat)	LD_{50} >5000 mg/kg (2.5 x the limit dose) Chromodacryorrhea was observed in 2/5 males on day 2 only. Delayed weight gain was observed in all rats, with the females being most affected. There was no dermal irritation. Toxicity Category IV
870.1300	Acute Inhalation (Rat)	LC_{50} >5.63 mg/L (2.8 x the limit concentration) Bradypnea was noted in all rats with recovery within two hours following exposure. Abnormal respiratory sounds were noted in all rats after exposure with recovery by day 1. Reddish adhesive materials in the nasorostral and periocular regions were noted from all test rats after exposure with recovery by day 2. No gross abnormalities. Two control rats had reddish adhesive materials in the nasorostral region after exposure with recovery within two hours. Toxicity Category IV
870.2400	Primary Eye Irritation - Rabbit	Minimally irritating Toxicity Category IV
870.2500	Primary Skin Irritation - Rabbit	Essentially nonirritating Toxicity Category IV
870.2600	Dermal Sensitization - Guinea Pig	Not a dermal sensitizer

TABLE 2.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	Subchronic (4 and 13 Week) Feeding (Rat)	NOAEL (male)≥400 mg/kg/day (Highest Dose Tested [HDT] in male) NOAEL (female) = 400 mg/kg/day LOAEL (female) = 800 mg/kg/day (HDT in female) based on perineal soiling and reduced body weights and body weight gain.
870.3100	Subchronic Feeding (Rat)	NOAEL = 60.5/65.3 mg/kg/day,M/F LOAEL = 189.5/199.6 mg/kg/day, M/F (HDT) based on kidney toxicity (lipofuscin pigment deposition in proximal tubule cells) in both sexes, and possible liver toxicity (hepatocyte eosinophilic granules) in males.
870.3100	Subchronic Feeding (Mice)	NOAEL (male)≥30 mg/kg/day (HDT in male) NOAEL (female)≥100 mg/kg/day (HDT in female)
870.3100	Subchronic Feeding (Mice)	NOAEL (male) ≥37.5 mg/kg/day (HDT) NOAEL (female) = 4.3 mg/kg/day LOAEL (female) = 14.1 mg/kg/daybased on enlarged kidneys (20% absolute and relative) accompanied by swelling of the proximal tubule cells (4/12 mice).
870.3150	Subchronic Feeding (Dog)	NOAEL = 14.7 / 15.6 mg/kg/day, M/F LOAEL = 75.2 / 79.4 mg/kg/day, M/F (HDT) based on brown and/or atrophied thymuses, and decreased thymus weight.
870.3200	21-Day Dermal (Rat)	Systemic NOAEL ≥1000 mg/kg/day (limit dose) Dermal NOAEL ≥1000 mg/kg/day (limit dose)
870.3700	Gavage Developmental Toxicity (Rat)	Maternal NOAEL =1000 mg/kg/day (limit dose) Developmental NOAEL ≥1000 mg/kg/day (limit dose)
870.3700	Gavage Developmental Toxicity (Rabbit)	Maternal NOAEL = 40 mg/kg/day Maternal LOAEL = 200 mg/kg/day based on maternal death Developmental NOAEL ≥1000 mg/kg/day (limit dose)
870.3800	Feeding Reproductive Toxicity (Rat)	Systemic NOAEL (males) = 100 ppm (4.85-13.75 mg/kg/day) Systemic LOAEL (males) = 1000 ppm (50.0-138.7 mg/kg/day) based on kidney lesions (slight tubular cell swelling) in F_0 and F_1 male rats. Systemic NOAEL (females) ≥1000 ppm (69.2-147.7 mg/kg/day, HDT) Reproductive NOAEL ≥1000 ppm (50.1-138.7 mg/kg/day for males; 69.2-147.7 mg/kg/day for females) Offspring NOAEL ≥1000 ppm (50-147.7 mg/kg/day)
870.4100	Chronic Feeding Toxicity (Dog)	NOAEL ≥46.7 / 45.9 mg/kg/day; M/F (HDT)
870.4200	Carcinogenicity Feeding (Mouse)	NOAEL = 0.99 mg/kg/day LOAEL = 10.06 / 10.28 mg/kg/day, M/F (HDT) based on effects on the kidney including tubular dilatation, chronic glomerulonephritis, and hyaline casts in females, and hyperplasia of the stomach mucosal epithelium in males. There was no evidence of carcinogenic potential under the conditions of this study. Dosing was too low to elicit frank toxicity and inadequate to assess carcinogenic potential.
870.4300	Chronic Feeding Toxicity / Carcinogenicity (Rat)	NOAEL = 0.823 mg/kg/day in males and 2.475 mg/kg/day in females LOAEL = 3.44 mg/kg/day (HDT in males), 24.97 mg/kg/day (HDT in females) based on the early and increased deposition of the pigments lipofuscin and hemosiderin in the renal proximal tubular cells of both sexes, and renal mineralization in female rats. There were no treatment-related increases in tumor incidence, compared to controls. Dosing was too low to elicit frank toxicity and inadequate to assess carcinogenic potential.
870.5100	Bacterial Reverse Gene Mutation Test (Ames Assay)	Negative in *Salmonella* TA strains and *E. coli* WP2 uvrA.
870.5300	Gene Mutation in Mouse	Negative
870.5375	*In Vitro* Cheomosomal Aberration in Chinese Hamster Lung	Polyploidy was induced when CHL (V79) cells were treated for 48 hours in the absence of S9, but there was no clastogenic effect on DNA.

TABLE 2.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5395	*In Vivo* Mammalian Cytogenetics - Micronucleus Assay in Mouse Bone Marrow Cells	Negative
870.5550	Unscheduled DNA Synthesis in Rat Hepatocytes	Negative
870.6200	Gavage Acute Neurotoxicity (Rat)	NOAEL ≥2000 mg/kg (limit dose) based on the absence of clinical signs, a lack of effects on FOB parameters and motor activity, and the absence of neuropathologic lesions.
870.6200	Feeding Subchronic Neurotoxicity (Rat)	NOAEL ≥75 male/ ≥250 female mg/kg/day (HDT) based on the absence of clinical signs, lack of effects on FOB parameters and motor activity, and absence of neuropathologic lesions.
Special Study	Pharmacology - Mice and Rabbits	Mice: A single I.P. dose of 1250 or 5000 mg/kg was lethal to all male and female mice within 24 hours. Death occurred as early as three hours at 5000 mg/kg and was preceded by behavioral and motor function abnormalities (e.g., alterations in alertness, visual placing, spontaneous activity, incoordination, decreased muscle tone, and compromised autonomic reflexes), some of which appeared as early as 30 minutes postdosing. Male and female mice responded similarly. NOAEL = 78.1 mg/kg LOAEL = 313 mg/kg (based on minimal effects including decreased spontaneous activity, minor alterations in muscle tone, and minor changes in autonomic functions such as slight hyperthermia, and slightly decreasedrespiratory rate). LD≥1250 mg/kg Rabbits: One of three rabbits gavaged at 5000 mg/kg showed decreased spontaneous activity, prostration, decreased muscle tone, compromised autonomic reflexes, and decreased respiratory and heart rate at one day after dosing, and died on Day 4. There were no clinically significant findings in the remaining rabbits of the 5000 mg/kg dose group or any lower dose groups, and no significant effects on EKGs or blood pressure in any dosed rabbits. NOAEL = 2500 mg/kg LOAEL = 5000 mg/kg (based on the response of one of three test subjects including decreased spontaneous activity, prostration, decreased muscle tone, compromised autonomic reflexes, decreased respiratory and heart rate at one day after dosing, and death on day 4).
870.7485	Absorption, Metabolism, and Excretion (Dog)	No treatment-related adverse effects were reported. Approximately 50% of a single gavage dose was absorbed over several hours. Bloodand plasma radioactivity peaked after 1-2 hours. Clearance from plasma and blood was notespecially rapid but nearly complete at 48 hours. Over 168 hours, excretion was 42.5-43.9% in the urine, and 48.6-50.6% in the feces. Tissue distribution was not measured. The test article appears to be metabolized primarily by hydrolysis to R-(+)-2-[4-cyano-2-fluorophenoxy)phenoxy]propanoic acid which was found in both the urine and feces. Several other metabolites were also formed, each representing <5% of the administered dose. No parent compound was found in the urine, and only minimal amounts were detected in the feces.
870.7485	Metabolism and Pharmacokinetics (Rat)	Absorption of gavaged test article was 93-100%, and urinary excretion was the major route of elimination regardless of dose, label position, or gender. Over 168-hours, 84-100% of the radioactivity was eliminated in urine, with 86-90% eliminated within 24 hours. Fecal excretion was <5%. There was no elimination via expired air. Over a 24-hour period, biliary elimination accounted for 1.7 % and 20.1% of the administered dose in males and females, respectively, in the low-dose [α-^{14}C]XRD–537 BE group, and 17.0% (males) and 11.6% (females) of the administered dose in the [β^{14}C]XRD–537 BE low-dose group. The greatest radioactivity levels were found in liver, kidneys, plasma, whole blood, heart, lung, and stomach, with the highest tissue levels being found in the liver and kidney at 2 hours. Most tissue levels accounted for <1% of the administered dose. Due to rapid excretion,tissue/organ levels declined to near detection limits by 24 hours in all dose groups.

TABLE 2.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
		There was a biphasic pattern for both labels with no substantial differences in pharmacokinetic indices (C_{max}, t_{cmax}, $t_{1/2}$, AUC). Time-to-maximum plasma concentration (t_{cmax} of 0.5 to 4 hrs) elimination half-times ($t_{1/2}$) reflected the relatively rapid absorption. Females had somewhat shorter tcmax and lower C_{max} values suggestive ofsaturated absorption processes. The acid metabolite (R-(+)-2-[4-(4-cyano-2-fluoro-phenoxy)phenoxy]propanoic acid) was the most prominent plasma fraction (~90-94% of the dose for males and ~75-81% for females regardless of dose). No parent compound or other metabolites were detected. The acid metabolite was the most common product in urine and feces 71-87% (urine) and 46-75% (feces) of the administered dose.
870.7600	Dermal Penetration (Rat)	Dermal absorption was ~25-34% for the spray formulation and ~11-16% for the EF-1218 formulation following a 24 hour dermal dosing. Within 48 hours, excretion was >85% in the urine and <1% in the feces, which is consistent with metabolism to water soluble metabolites and subsequent urinary excretion. Levels tested: Four Fischer 344 rats were dermally dosed for 24 hours with ^{14}C-labeled DE-537 n-butyl ester and nonlabeled DE-537 n-butyl ester in two formulations 200 mg/mL test article in EF1218 (Clincher EDC with which DE-537 n-butyl ester is normally formulated) and a spray solution at 0.005, 1.0, or 1.8 mg/cm^2.
Special Study	Hepatocellular Proliferation in Rats	In a subchronic oral toxicity study in rats (MRID 45000413), satellite rats dosed for 4 weeks had hepatocellular hypertrophy and focal necrosis at all dose levels. Although multiple necrotic foci accompanied by inflammatory cells were graded very slight, and were not considered dose-related, this study was performed to explore these findings. An initial dramatic increase in DNA synthesis during the first week of treatment was followed by hepatocellular hypertrophy at subsequent observations. This was the reason for enlarged livers observed in XRD-537nBu-treated rats. Levels tested: 0, 3.0, 25, 100, or 400 mg/kg/day in the diet with sacrifices at 1, 2, 4, and 13 weeks. One week prior to sacrifice, 10 µL BrdU/hour was administered via an ALZET osmotic pump implanted subcutaneously. BrdU is a DNA stain used to quantify hepatocellular proliferation.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for cyhalofop-butyl used for human risk assessment is shown in the following Table 3:

TABLE 3.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CYHALOFOP-BUTYL FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose (mg/kg/day)	Endpoint	Study
Acute Dietary	An appropriate endpoint attributable to a single dose was not identified. An acute RfD was not established.		

TABLE 3.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CYHALOFOP-BUTYL FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose (mg/kg/day)	Endpoint	Study
Chronic Dietary	NOAEL (Female) = 0.99 FQPA SF = 1	Kidney effects in females including tubular dilatation, chronic glomerulonephritis, and hyaline casts at the LOAEL of 10.06 / 10.28 mg/kg/day, M/F.	Carcinogenicity in Mice MRID 45000418
	Chronic RfD = NOAEL/UF = 0.99 mg/kg/day/100 ≈0.01 mg/kg/day Chronic PAD = cRfD/FQPA SF = 0.01 mg/kg/day/1 = 0.01 mg/kg/day		
Incidental Oral, Short-Term (1–30 days)	NOAEL (Female) = 4.3 FQPA SF = 1	Enlarged kidneys in females accompanied by swelling of the proximal tubule cells in 4/12 mice at the LOAEL of 14.1 mg/kg/day. LOC = 100	Subchronic Feeding in Mice MRID 45014706
Incidental Oral, Intermediate-Term (1–6 months)			
Dermal, Short-Term (1–30 days)	No hazard has been identified to support quantification ofrisk. No systemic effects were observed in the 21-day dermal study in therat at doses up to 1000 mg/kg/day (limit dose). In addition, nodevelopmental effects were observed in the developmental toxicity studies.		
Dermal, Intermediate-Term (1–6 months)			
Dermal, Long-Term[a](>6 months)	NOAEL (Female) = 0.99 FQPA SF = 1	Kidney effects in females including tubular dilatation, chronic glomerulonephritis, and hyaline casts at the LOAEL of 10.06 / 10.28 mg/kg/day, M/F. LOC = 100	Carcinogenicity in Mice MRID 45000418
Inhalation, Short-Term[b](1–30 days)	NOAEL (Female) = 4.3 FQPA SF = 1	Enlarged kidneys in females accompanied by swelling of the proximal tubule cells in 4/12 mice at the LOAEL of 14.1 mg/kg/day. LOC = 100	Subchronic Feeding in Mice MRID 45014706
Inhalation, Intermediate-Term[b](1–6 months)			
Inhalation, Long-Term[b](>6 months)	NOAEL (Female) = 0.99 FQPA SF = 1	Kidney effects in females including tubular dilatation, chronic glomerulonephritis, and hyaline casts at the LOAEL of 10.06 / 10.28 mg/kg/day, M/F. Target MOE = 100	Carcinogenicity in Mice MRID 45000418
Cancer	This herbicide has not been classified. The rat and mouse carcinogenicity studies are identified as data gaps. Since the doses tested in these studies were too low to assess the carcinogenic potential of cyhalofop-butyl, the cancer dietary risk assessment was conducted using the potency factor (Q1*) of 2.3 x 10^{-1} for the structural analog diclofop-methyl.		

[a]Since an oral endpoint was identified, a 34% dermal absorption factor should be used in route-to-route extrapolations.
[b]Since an oral endpoint was identified, a default oral: inhalation absorption factor of 1 should be used in route-to-route extrapolations.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* No tolerances have previously been established for the combined residues of cyhalofop-butyl, in or on raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from cyhalofop-butyl in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-

use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. No toxicological endpoint attributable to a single exposure was identified in the available toxicology studies. No appropriate study available show any acute dietary effects of concern.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA insert 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Residue levels are at the recommended tolerances for rice and 100% of the crop rice is treated with cyhalofop-butyl. All sub-populations had dietary exposure values which represented <1% of the cPAD.

iii. *Cancer*. The cancer dietary risk assessment was conducted using the potency factor (Q1*) of 2.3×10^{-1} for the structural analog diclofop-methyl since the dose levels in the rat and mouse carcinogenicity studies were too low to assess the carcinogenic potential of cyhalofop-butyl. In cancer studies with diclofop-methyl there are tumors at doses similar to those doses which caused no tumors in the cyhalofop-butyl studies. Hypothetical rat and mouse Q1* values were calculated on the assumption that tumor incidence might rapidly escalate at doses greater than those actually used in the submitted studies. When a hypothetical Q1* was calculated for cyhalofop-butyl by assigning increased tumors at doses above those actually tested, the results came out slightly less potent than the Q1* for diclofop-methyl . For risk assessment purposes the diclofop-methyl Q1* will not underestimate any possible cancer risk. A refined (Tier 3) deterministic cancer risk assessment was conducted. Inputs to the dietary exposure assessment included the anticipated residues of 0.0066 ppm for rice grain from field trials and estimates that a maximum of 17.6% of rice will be treated with cyhalofop-butyl. Based on the anticipated residue and the percent of the crop treated, the refined dietary cancer risk from residues in food is 6.2×10^{-8}.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used percent crop treated (PCT) information in Table 4 and Table 5 as follows.

TABLE 4.—SOUTHERN STATES ESTIMATED PERCENT RICE CROP TREATED

Year	2002	2003	2004	2005	2006
EPA Estimate	2	4.3	4.3	5.02	5.6

TABLE 5.—CALIFORNIA ESTIMATED PERCENT RICE CROP TREATED

Year	2002	2003	2004	2005	2006
EPA Estimate	6.7	12.7	13.2	15.6	17.6

The Agency believes that the three conditions have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The market share was for cyhalofop-butyl on rice was projected based on current percent of crop treated with the existing alternative controls. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. More importantly, EPA has taken steps to ensure this market share projection is not exceeded by imposing, as a condition of registration for cyhalofop-butyl under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, a production limit corresponding to the projection. As to Conditions 2 and 3, regional consumption information and consumption information for significant sub-populations is taken into account through EPA's computer-based model for evaluating the exposure of significant sub-populations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant sub-population group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which cyhalofop-butyl may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for cyhalofop-butyl in drinking water. Because the Agency does not have comprehensive monitoring data,

drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of cyhalofop-butyl.

The GENEEC model is not adequate for predicting the estimated environmental concentrations (EECs) for pesticide applications to rice. The Agency developed a model using available chemical and physical property data, to calculate the EECs for the use of cyhalofop-butyl on rice. The model was based on a hypothetical rice paddy, 1 hectare in size, flooded to a depth of 10 cm, with a sediment interaction zone of 1 cm. Based on these dimensions there are one million liters of water and 100 cubic meters of active sediment in the paddy. The sediment is assumed to weigh 135,000 kg based on a bulk density of 1.35g/cc. This model was used for both dry and water seeded rice.

The peak drinking water concentrations for the Gulf Coast and California are 137 and 36 ppb, respectively. The resulting chronic EECs (annual averages in Index Reservoir) are 14.2 and 3.7 ppb, respectively. The peak drinking water concentration for the Mississippi Valley is 119 ppb, and the chronic EEC annual average is 12.4 ppb. If the (normal) release is on day 78 (90 days from seedling), the peak is 25 ppb and the annual average is 2.6 ppb.

Based on this model and the SCI-GROW model the estimated environmentalconcentrations (EECs) of for acute exposures are estimated to be: In a water-seeded paddy 36 parts per billion (ppb) , and in a dry-seeded paddy 25 ppb for surface water and 0.16 ug/L ppb for ground water. The EECs for chronic exposures are estimated to be 3.7 ppb for water-seeded rice and 2.6 ppb for dry-seeded rice.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to cyhalofop-butyl they are further discussed in the aggregate risk sections.

Because EECs calculated using the above models exceeded the DWLOC regarding potential cancer risk, EPA undertook a further analysis of this estimate. It was determined that there was not sufficient reliable data to further refine these estimates. Therefore, the Agency required that the FIFRA label for cyhalofop-butyl mandate a holding time of seven days before the treated paddy water may be released to the environment. This 7–day holding time will result in the concentration of cyhalofop-butyl, expressed as an annual average (conc/365), falling below 0.15 ppb.

3. *From non-dietary exposure*. The term ''residentialexposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Cyhalofop-butyl is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism oftoxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether cyhalofop-butyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyhalofop-butyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cyhalofop-butyl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

D. Safety Factor for Infants and Children

1.*In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants andchildren. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* or postnatal exposure.

3. *Conclusion*. There is a complete toxicity data base for cyhalofop-butyl and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor should be reduced to 1x in assessing the risk posed by this chemical because: (1) There is no indication of quantitative or qualitative increased susceptibility; (2) a developmental neurotoxicity study (DNT) is notrequired; (3) the dietary food and drinking water exposure assessments will not underestimate the potential exposures for infants and children; (4) there currently no registered or proposed residential (non-occupational) uses of cyhalofop-butyl, and (5) the database pertaining to threshold effects on infants and children is complete.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water

exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level andquantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculatedDWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with apesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. An appropriate endpoint attributable to a single dose was not identified. Therefore, cyhalofop-butyl is not expected to pose an acute risk.

2. *Chronic risk*. For all population subgroups, the chronic DWLOC is greater than the chronic surface EEC, and there is no expectation of migration of cyhalofop-butyl residues to ground water, therefore, aggregate chronic (non cancer) exposure to cyhalofop-butyl is not expected to exceed the Agency's level of concern. There are no residential uses for cyhalofop-butyl that result in chronic residential exposure to cyhalofop-butyl. The DWLOCs for chronic risk are shown in Table 6 as follows:

TABLE 6.—CHRONIC DWLOC CALCULATIONS

Population Subgroup[1]	Chronic Scenario					
	cPAD mg/kg/day	Chronic Food Exp mg/kg/day[2]	Max Chronic Water Exp mg/kg/day[3]	Ground Water EEC (*units*)	Surface Water EEC (*units*)[4]	Chronic DWLOC (µg/L)[4/5]
U.S. Population	0.01	0.000007	0.009993		14.2	350
All Infants	0.01	0.000028	0.009972		14.2	100
Children (1-6 years)	0.01	0.000015	0.009985		14.2	100
Children (7-12 years)	0.01	0.000009	0.009991		14.2	100
Females (13-50 years)	0.01	0.000005	0.009995		14.2	300
Males (13-19 years)	0.01	0.000005	0.009995		14.2	350
Males (20+ years)	0.01	0.000006	0.009994		14.2	350
Seniors (55+ years)	0.01	0.000004	0.009996		14.2	350
Non-hispanic/non-white/non-black	0.01	0.000018	0.009982		14.2	350

[1]The Non-hispanic/non-white/non-black population was included in this table because it has the highest adult dietary exposure level. Body weights used to calculate the DWLOCs are 70 kg for adult males; 60 kg for adult females, and 10 kg for children <12 years.

[2]The chronic food exposure levels are for rice, the sole crop being considered for registration.

[3]Maximum Chronic Water Exposure (mg/kg/day) = [Chronic PAD (mg/kg/day) - Chronic Dietary Exposure (mg/kg/day)]

[4]This table presents the surface water EECs without taking into account the further reduction achieved by the mandated holding period. Even absent the holding period the predicted levels are well within the DWLOCs.

[5]Chronic DWLOC(µg/L) = [maximum chronic water exposure (mg/kg/day) x body weight (kg)]/[water consumption (L/day)x 10^{-3} mg/ µg]

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Cyhalofop-butyl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Cyhalofop-butyl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. Cyhalofop-butyl is not registered for use on any sites that would result in residential exposure. The cancer dietary risk assessment was conducted using the potency factor (Q1*) of 2.3 x 10^{-1} for the structural analog diclofop-methyl since the dose levels in the rat and mouse carcinogenicity studies were too low to assess the carcinogenic potential of cyhalofop-butyl. In cancer studies with diclofop-methyl there are tumors at doses similar to those doses which resulted in no tumors in the cyhalofop-butyl studies. Hypothetical rat and mouse Q1* values were calculated on the assumption that tumor incidence might rapidly escalate at doses greater than those actually used in the submitted studies. These hypothetical Q1*s came out slightly less potent than the Q1* for diclofop-methyl. Thus, given that no data with cyhalofop-butyl

has indicated carcinogenic potential, use of the diclofop-methyl Q1* will produce a conservative (health-protective) estimate of cancer risk. Based on the anticipated residue and the percent of the crop treated, the refined dietary cancer risk from residues in food is 6.2×10^{-8}. The cancer DWLOC for the general population is shown in the table below. With a water holding time of 7 days, the concentration of cyhalofop-butyl residues in paddy water, expressed as an annual average (concentration/365) will be less than 0.15 µg/L. Since this value is below the calculated cancer DWLOC of 0.44 µg/L, aggregate cancer risk to cyhalofop-butyl is not expected to exceed EPA's level of concern.

TABLE 7.—CANCER DWLOC CALCULATIONS

Population	Q*	Negligible Risk Level[1]	Target Max Exposure[2] mg/kg/day	Chronic Food Exposure mg/kg/day	Max Water Exposure[3] mg/kg/day	Cancer DWLOC[4](µ/L)
U.S. Population	0.23	3×10^{-6}	1.3×10^{-5}	3×10^{-7}	1.27×10^{-5}	0.44

[1]EPA has traditionally regarded risks in the range of the probability of one in one million as negligible, with risks as high as three in one million considered as falling within that range.

[2] Target Maximum Exposure (mg/kg/day) = [negligible risk/Q*]

[3] Maximum Water Exposure (mg/kg/day) = Target Maximum Exposure - Chronic Food Exposure (Note: There are no residential uses for this chemical.)

[4] Cancer DWLOC(µg/L) = [maximum water exposure (mg/kg/day) x body weight (kg)]/[water consumption (L) x 10^{-3} mg/µg]² Body weight (kg) = 70

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to cyhalofop-butyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example—gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican tolerances/Maximum Residue Levelsfor cyhalofop-butyl residues. Thus, harmonization is not an issue at this time.

C. Conditions

The following data gaps must be fulfilled: Subacute (28-day) inhalation toxicity study, a carcinogenicity study in rats, and a carcinogenicity study in mice.

V. Conclusion

Therefore, time limited tolerances are established for combined residues of cyhalofop (cyhalofop-butyl plus cyhalofop-acid) and the di-acid metabolite in or on rice grain at 0.03 ppm and rice straw 8.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0087 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 5, 2002.

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

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

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

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you maycontact James Tompkins by phone at (703) 305–5697, by e-mail attompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins

at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0087, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Regulatory Assessment Requirements

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

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: May 23, 2002.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Part 180 is amended by adding § 180.579 to read as follows:

§ 180.579 Cyhalofop-butyl; tolerances for residues.

(a) *General.* Time-limited tolerances are established for combined residues of cyhalofop (cyhalofop-butyl, R-(+)-n-butyl-2-(4(4-cyano-2- fluorophenoxy)-phenoxy)propionate, plus cyhalofop acid, R-(+)-2-(4(4-cyano-2-fluorophenoxy)-phenoxy)propionic acid) and the di-acid metabolite, (2R)-4-[4-(1-carboxyethoxy)phenoxy]-3-fluorobenzoic acid, from the application of the herbicide cyhalofop-butyl in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/Revocation Date
Rice, grain	0.03	6/1/2007
Rice, straw	8.0	6/1/2007

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

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

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

[FR Doc. 02–13982 Filed 6–3–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7223–2]

RIN 2050–AE77

Notification of States Having Interim Authorization for the Amendments to the Corrective Action Management Unit Rule

AGENCY: Environmental Protection Agency.

ACTION: Notification of interim authorization.

SUMMARY: The Environmental Protection Agency (''EPA'' or ''the Agency'') is today notifying the public which States have submitted notifications to EPA under the requirements of 40 CFR 271.27 and thus have interim authorization for the Corrective Action Management Units (CAMU) amendments rule (January 22, 2002, 67 FR 2962). The CAMU amendments rule granted interim authorization to states that are authorized for the 1993 CAMU rule, and that submitted a notification letter to EPA by March 22, 2002.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (hearing impaired) (800) 553–7672. In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of today's document, contact Wayne Roepe, U.S. Environmental Protection Agency (5303W), 1200 Pennsylvania Ave., NW, Washington, DC 20460, at (703) 308–8630, or e-mail *roepe.wayne@epa.gov.*

SUPPLEMENTARY INFORMATION: The January 22, 2002 Corrective Action Management Units (CAMU) amendments rule promulgated amendments to the regulations governing CAMUs. These amendments were promulgated under HSWA statutory authority and are generally more stringent than the previous CAMU regulations, published on February 16, 1993 (58 FR 8658). Thus, in states that are authorized for the 1993 CAMU rule, there was the potential for dual implementation of the CAMU regulations by EPA and states authorized for the 1993 rule if these states are not authorized for the amendments before they become effective.

To avoid this potential disruption in the implementation of the RCRA cleanup program caused by the regulatory authority for CAMUs being split between states and EPA, the CAMU amendments rule promulgated an authorization procedure called interim authorization-by-rule. The rule also granted interim authorization for those amendments to states that have final authorization for the 1993 CAMU rule and submitted a letter to EPA that they are willing and able to implement the amended CAMU regulations by March 22, 2002 (see 40 CFR 271.27(a)).

A total of 25 states authorized for the 1993 CAMU rule, submitted the notification letter to EPA by March 22, 2002 and met the criteria for interim authorization-by-rule. These states are: Alabama, California, Delaware, Florida, Georgia, Illinois, Indiana, Louisiana, Missouri, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, Wisconsin, and Wyoming. Thus, these states have interim authorization for the CAMU amendments rule, effective April 22, 2002.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 28, 2002.

Marianne Lamont Horinko,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 02–13980 Filed 6–3–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 422

RIN 1006–AA42

Law Enforcement Authority at Bureau of Reclamation Projects

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule with request for comments.

SUMMARY: The Bureau of Reclamation (Reclamation) is issuing this rule to establish criteria for the use of non-Department of the Interior (Department) law enforcement personnel within a Reclamation project or on Reclamation lands. We are required by law to issue this rule in order to provide for the security of dams, facilities, and resources under our jurisdiction.

DATES: This rule is effective on June 4, 2002. We must receive any comments on this final rule no later than August 5, 2002.

ADDRESSES: Any comments on this rule should be sent to Commissioner's Office, Bureau of Reclamation, 1849 C Street NW., Washington, DC 20240, Attn: Henk Willems.

FOR FURTHER INFORMATION CONTACT: Larry Todd, Director, Operations, Bureau of Reclamation, 1849 C Street NW., Washington, DC 20240, telephone (202) 513–0615.

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 107–69 (November 12, 2001), an Act to Amend the Reclamation Recreation Management Act of 1992 (the Act) provides for law enforcement authority at Reclamation facilities. Section 1(g) provides: ''REGULATIONS—Except for the

authority provided in section 2(c)(1), the law enforcement authorities provided for in this section may be exercised only pursuant to regulations issued by the Secretary of the Interior and approved by the Attorney General.'' As enacted, however, the Act does not contain a section 2(c)(1), as referred to in section 1(g), but does contain a section 1(c)(1), which ''authorize[s] law enforcement personnel from the Department of the Interior to act as law enforcement officers to enforce Federal laws and regulations within a Reclamation project or on Reclamation lands.'' The Department worked closely with the Congress to develop the language in this bill and believes that the congressional intent of section 1(g) was to refer to section 1(c)(1). Reclamation is promulgating these regulations consistent with that interpretation. The Act provides for law enforcement at Reclamation facilities in one of two ways: using Department law enforcement personnel (this would not require us to issue regulations or obtain Department of Justice approval); or, using law enforcement personnel from non-Department Federal agencies (other than the Department of Defense) and State, local or tribal law enforcement organizations (this would require us to issue regulations that the Department of Justice must approve). These regulations have been reviewed and approved by the Department of Justice, as required by the Act.

Since Reclamation plans to use some non-Department law enforcement officials, these regulations provide fitness and training requirements for non-Department law enforcement personnel. Under these regulations, Reclamation will:

(1) Entrust law enforcement authority only to law enforcement professionals possessing adequate education and/or experience, aptitude, and high moral character;

(2) Evaluate law enforcement programs and operations to ensure compliance with applicable Federal laws and regulations; and

(3) Ensure that qualitative standards are attained and maintained during the life of any cooperative agreements or contracts with other Federal agencies or with State, local, or tribal law enforcement organizations.

II. Public Involvement

Reclamation did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with 5 U.S.C. 553(b), Reclamation finds that good cause exists for not publishing an NPRM. The time-frame for the NPRM process, which would result in delaying the effective date of this rule, is contrary to the public interest because it may render individuals and facilities vulnerable to subversive activity, sabotage, or terrorist attack. Moreover, with the coming of Spring and planned events for Reclamation's upcoming Centennial, more people will be visiting Reclamation's many recreation areas. The measures in this rule are intended to address a potential terrorist attack as well as other criminal activities against Reclamation lands, dams and powerplants and related facilities or against individuals at those places. Immediate action is required to accomplish these objectives, and any delay in the effective date of this rule is impracticable and contrary to the public interest. For these same reasons, we find that good cause exists under 5 U.S.C. 553 (d)(3) for making this regulation effective less than 30 days after publication in the **Federal Register**.

On September 11, 2001, immediately following the terrorist attacks on the World Trade Center and the Pentagon, security at all Reclamation dams and powerplants was heightened, and armed law enforcement officers from Department agencies began around-the-clock patrols at key facilities. National security officials warn that future terrorist attacks against high visibility civilian targets may be anticipated, and all Reclamation facilities will remain on a heightened security status indefinitely.

Before enactment of Public Law 107–69, Reclamation generally had to rely on law enforcement personnel from other bureaus within the Department of the Interior to protect Reclamation facilities. While other bureaus have been very cooperative in providing law enforcement assistance, the continued need for heightened security at many facilities has strained available Department law enforcement resources. Furthermore, with the coming of Spring, Department law enforcement personnel will have to return to their seasonal duty stations. Accordingly, Reclamation will need to exercise its authority to contract or enter into cooperative agreements for law enforcement services with Department of the Interior bureaus and other Federal, State, tribal or local law enforcement agencies. We need to implement this authority as soon as possible to ensure the safety of the public and Reclamation employees and to protect critical national infrastructure and other critical water and power resource facilities. Reclamation will develop a mandatory orientation session for officers who are to be authorized to perform Reclamation law enforcement duties.

While this rule will be effective on the date published, Reclamation will accept and consider comments on the rule for 60 days after the date of publication. Among the issues on which Reclamation expects comments are the appropriate treatment of non-Department Federal officials under these regulations, the extent to which this framework for State and local law enforcement participation may be consistent with the diverse expectations of local communities across the seventeen Western States, and whether these and other issues should be addressed in regulation or in individual contracts or cooperative agreements.

III. Procedural Matters

National Environmental Policy Act

Reclamation has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required. The rule is categorically excluded from NEPA review under 40 CFR 1508.4, 516 DM 2, Appendix 1, § 1.10.

Executive Order 12866, Regulatory Planning and Review

This document is not a significant rule, and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy or adversely affect the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. While risk assessments at many critical facilities are not yet completed and thus total law enforcement contractual needs cannot be fully determined, it is estimated that the total start-up cost for implementing Public Law 107–69 will be in the range of $50—55 million in the first year. This estimate is based on contracting for around-the-clock law enforcement services at up to 60 critical facilities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The selection process for law enforcement personnel will be consistent with that used by the Department, thereby assuring that high professional law enforcement standards are maintained.

(3) This rule will not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This

rule provides the legal authority to continue to safely provide services to project beneficiaries without the threat of terrorism and to protect their contractual rights and entitlements under Federal reclamation laws.

(4) This rule does not raise novel legal or policy issues. It is Reclamation's intent to utilize the established policies and guidelines on law enforcement being used in the Department.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Fairness Act. The rule:

(1) Will not have an annual effect on the economy of $100 million or more. A farm, according to the Small Business Administration (SBA), is a small business if it has annual receipts of less than $500,000. The vast majority of the 140,000 farms receiving Reclamation project irrigation water can be classified as ''small businesses'' under the SBA definition. This rule will help maintain water deliveries to those farms.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule will have a negligible impact on local and regional costs or prices, but the presence of law enforcement officers and the enhanced security measures at key Reclamation projects may in fact help to stabilize the existing economic conditions located in the project area.

(3) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. In fact, the rule may create additional employment opportunities for local residents in Reclamation project areas. No effects are anticipated on local competition and/or investment opportunities as a result of this rule.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. Moreover, the rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq*) is not required.

Executive Order 12630, Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. Thus, a takings implication assessment is not required, nor will the rule have any effect on the use and/or value of private property.

Paperwork Reduction Act

This rule does not require any information collection under the Paperwork Reduction Act. Therefore, an OMB Form 83-I is not required.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, this rule does not have Federalism implications. A Federalism assessment is not required. The rule will not affect the roles, rights, and responsibilities of States in any way. Moreover, the rule will not result in the Federal Government taking control of traditional State responsibilities, nor will it interfere with the ability of States to formulate their own policies. In addition, the rule will not affect the distribution of power, the responsibilities among the various levels of government, nor preempt State law.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the Department's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Executive Order.

Executive Order 13211, Energy Impacts

In accordance with Executive Order 13211, the rule will not have a significant adverse effect on the supply, distribution, and use of energy. Therefore, a Statement of Energy Effects is not required.

Comments

If you wish to comment on this rule, you may submit your comments by one of two methods. You may mail comments to: Bureau of Reclamation, 1849 C Street NW., Washington, DC 20240, Attn: Henk Willems. You may also hand-deliver comments to the Bureau of Reclamation, Room 7610, Main Interior Building, 1849 C Street NW., Washington, DC 20240. 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 rulemaking record. We will honor the request to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 43 CFR Part 422

Law enforcement authority, Law enforcement standards, Law enforcement agreements, Law enforcement officer responsibilities, Law enforcement officer conduct.

Dated: May 28, 2002.

Bennett W. Raley,

Assistant Secretary—Water and Science.

For the reasons stated in the preamble, Reclamation adds a new part 422 to title 43 of the Code of Federal Regulations as follows:

PART 422—LAW ENFORCEMENT AUTHORITY AT BUREAU OF RECLAMATION PROJECTS

Sec.
422.1 Purpose of this part.
422.2 Definitions.
422.3 Reclamation law enforcement policy.

Responsibilities

422.4 Responsibilities of the Commissioner of Reclamation.
422.5 Responsibilities of the Law Enforcement Administrator.
422.6 Responsibilities of the Chief Law Enforcement Officer.

Program Requirements

422.7 Authorization to perform law enforcement duties.
422.8 Requirements for law enforcement functions and programs.
422.9 Reclamation law enforcement contracts and cooperative agreements.
422.10 Requirements for authorizing officers to exercise Reclamation law enforcement authority.
422.11 Position sensitivity and investigations.
422.12 Required standards of conduct.
422.13 Reporting an injury or property damage or loss.

Authority: 16 U.S.C. 460l-31; 43 U.S.C. 373b, 373c

422.1 Purpose of this part.

(a) This part implements Public Law No. 107–69, 115 Stat. 593 (November 12, 2001), an Act to Amend the Reclamation Recreation Management Act of 1992, by:

(1) Establishing eligibility criteria, such as fitness and training requirements, for Federal, State, local, and tribal law enforcement personnel to protect Bureau of Reclamation (Reclamation) facilities and lands; and

(2) Ensuring that Federal, State, local, and tribal law enforcement programs comply with applicable laws and regulations when they discharge the Secretary of the Interior's authority.

(b) This part does not apply to, or limit or restrict in any way, the investigative jurisdiction or exercise of law enforcement authority of any Federal law enforcement agency, under Federal law, within a Reclamation project or on Reclamation lands. The provisions of this part apply to non-Department of the Interior Federal law enforcement agents only where Reclamation has entered into a cooperative agreement or contract with a Federal law enforcement agency, pursuant to Public Law 107–69, for the services of specified individual Federal law enforcement agents.

(c) Nothing in this part shall be construed or applied to affect any existing right of a State or local government, or an Indian tribe, or their law enforcement officers, to exercise concurrent civil and criminal jurisdiction within a Reclamation project or on Reclamation lands.

422.2 Definitions.

(a) *Department* means the United States Department of the Interior.

(b) *Reclamation* means the Bureau of Reclamation of the United States Department of the Interior.

(c) *Law Enforcement Program* means Reclamation's program to provide law enforcement and protective services at Reclamation project facilities and on Federal project lands. The activity is directed toward the preservation of public order, safety, and protection of resources and facilities, and their occupants.

(d) *Law Enforcement Administrator (LEA)* means the person designated by the Commissioner of Reclamation to:

(1) Direct the law enforcement program and units;

(2) Develop the policy, procedures, and standards for the law enforcement program within Reclamation; and

(3) Provide for inspection and oversight to control enforcement activity.

(e) *Chief Law Enforcement Officer (CLEO)* means the highest level duly authorized law enforcement officer for a non-Department law enforcement agency.

(f) *Law Enforcement Officer* means:

(1) A duly authorized Federal law enforcement officer, as that term is defined in Public Law 107–69, from any non-Department Federal agency who is authorized to act as a law enforcement officer on Reclamation projects and lands; or

(2) Law enforcement personnel of any State, local government, or tribal law enforcement agency.

§ 422.3 Reclamation law enforcement policy.

The law enforcement policy of Reclamation is:

(a) To maintain an accountable, professional law enforcement program on Reclamation project facilities, and to protect Federal project lands and their occupants. Reclamation will meet its law enforcement responsibilities by establishing and promoting a law enforcement program which maintains law and order, and protects persons and property within Reclamation property and on Reclamation lands;

(b) To entrust law enforcement authority only to persons deemed to be qualified, competent law enforcement professionals;

(c) To maintain a continuing review and evaluation of Reclamation's law enforcement programs and operations to ensure compliance with applicable Federal laws, regulations, and policies of the Department;

(d) To ensure that approved standards are attained and maintained by each law enforcement unit undertaking a contract or cooperative agreement;

(e) To increase the effectiveness of law enforcement through the efficient handling and exchange of criminal and intelligence information with other Federal, State, local, and tribal agencies, as appropriate;

(f) To provide the public prompt access to information concerning its law enforcement program in accordance with the spirit and intent of the Freedom of Information Act, 5 U.S.C. 552; Department FOIA Regulations, 43 CFR 2; and 383 DM 15, Freedom of Information Act Handbook (*see* www.doi.gov);

(g) To ensure that the use of force by agency personnel under contracts or cooperative agreements with Reclamation complies with the Constitution and the law of the United States; and

(h) To negotiate contracts and cooperative agreements under this part to ensure that:

(1) Reclamation retains flexibility to meet its law enforcement needs; and

(2) Entities entering into contracts and cooperative agreements are appropriately reimbursed.

Responsibilities

422.4 Responsibilities of the Commissioner of Reclamation.

(a) The Secretary of the Interior has designated the Commissioner of Reclamation to implement law enforcement authority at Reclamation facilities. The Commissioner is responsible for:

(1) Implementing the provisions of Public Law 107–69;

(2) Ensuring consistency with applicable Departmental and Reclamation requirements for law enforcement officers;

(3) Carrying out the specific responsibilities listed in paragraph (b) of this section; and

(4) Developing any additional policies necessary for the successful accomplishment of Reclamation's law enforcement responsibilities.

(b) The Commissioner's specific responsibilities include the following:

(1) Designating Reclamation's Law Enforcement Administrator (LEA), with authority to discharge the responsibilities assigned by these regulations;

(2) Overseeing the LEA's ability to ensure that all law enforcement officers under contract or cooperative agreement for law enforcement services to Reclamation are properly trained and receive necessary authorizations; and

(3) Overseeing the LEA's development of policy, procedures, and standards for directing the law enforcement units, and the installation of management controls for proper implementation of the law enforcement program.

422.5 Responsibilities of the Law Enforcement Administrator.

(a) The Law Enforcement Administrator (LEA):

(1) Reports directly to the Commissioner;

(2) Oversees the law enforcement program; and

(3) Is responsible for promulgating mission-oriented policy, procedures, and standards to ensure the effective implementation of Reclamation's law enforcement authority.

(b) The chain of command for law enforcement will run from the Commissioner through the LEA to other positions designated as part of the Reclamation law enforcement managerial structure, which may include a Chief Law Enforcement Officer. The units will be staffed

through cooperative agreements or contracts with law enforcement personnel from Department and non-Department Federal agencies or State, local, or tribal law enforcement organizations, with unit command being provided as part of the cooperative agreement or contract.

(c) Within the chain of command specified in paragraph (b) of this section, the LEA provides policy direction, inspection, and oversight for the law enforcement functions of Reclamation.

§ 422.6 Responsibilities of the Chief Law Enforcement Officer.

The Chief Law Enforcement Officer's (CLEO) responsibilities are to ensure that:

(a) Law enforcement officers working at Reclamation facilities and on Federal project lands are duly authorized under § 422.7;

(b) Law enforcement officers authorized under a contract or cooperative agreement meet training and fitness requirements established in this part and abide by standards of conduct and performance established in this part and in the contract or cooperative agreement;

(c) Law enforcement officers are under the immediate supervision of a commanding officer who is part of each law enforcement unit for which Reclamation enters into a contract or cooperative agreement; and

(d) Required reports are made to the LEA, or to another person designated by Reclamation, for purposes of carrying out the law enforcement functions for which Reclamation has a contract or cooperative agreement.

Program Requirements

§ 422.7 Authorization to perform law enforcement duties.

(a) The CLEO must issue written authorization to each officer who is authorized to perform Reclamation law enforcement duties.

(b) Before issuing an authorization under paragraph (a) of this section, the CLEO must ensure that the officer meets:

(1) All the requirements for officers authorized under the law enforcement contract or cooperative agreement with Reclamation; and

(2) All requirements in §§ 422.10, 422.11, and 422.12.

(c) The CLEO must terminate an officer's authorization under paragraph (a) of this section and must notify the issuing Reclamation official when the officer:

(1) Terminates employment as a full-time police officer for any reason;

(2) Is transferred to another area of jurisdiction, where the continued performance of Reclamation duties would be impractical;

(3) Is suspended for any offense that would impair his/her fitness to perform law enforcement duties; or

(4) Is under indictment or has been charged with a crime.

(d) The LEA can, upon showing just cause, revoke the authorization of an individual officer to perform law enforcement services under Reclamation's law enforcement authority after providing written notice to the CLEO.

§ 422.8 Requirements for law enforcement functions and programs.

The requirements in this section apply to Reclamation and to each law enforcement unit exercising Reclamation's law enforcement authority.

(a) The law enforcement program must provide for control, accountability, coordination, and clear lines of authority and communication. This organizational structure must apply both within the law enforcement units, and between the law enforcement units and the LEA or other personnel designated as responsible under the law enforcement contract or cooperative agreement.

(b) Only duly authorized law enforcement officers may discharge law enforcement duties.

(c) Each law enforcement contract or cooperative agreement must specifically name those individuals within the contracting agency who are authorized to exercise Reclamation law enforcement authority consistent with applicable laws, regulations, and the requirements of this part. A CLEO can authorize only duly authorized officers who meet the standards in § 422.7 to exercise law enforcement authority.

(d) Any uniform worn by law enforcement officers must display distinctive identification to ensure that the officer is:

(1) Distinguishable from non-law enforcement personnel; and

(2) Easily recognized by the public as a law enforcement officer.

(e) Officers investigating a violation of Federal law under a law enforcement contract or cooperative agreement with Reclamation will notify applicable Federal law enforcement authorities, as appropriate, pursuant to 43 U.S.C. 373b(d)(4).

(f) The LEA must:

(1) Establish an incident reporting system for incidents that occur on Reclamation lands; and

(2) Include the reporting requirements for incidents as an element of each contract or cooperative agreement.

§ 422.9 Reclamation law enforcement contracts and cooperative agreements.

(a) The LEA, or a person that the LEA designates, may enter into contracts or cooperative agreements with Federal, State, local, or tribal law enforcement agencies to aid in enforcing or carrying out Federal laws and regulations on Reclamation facilities or Reclamation-managed property. Reclamation will rescind the contract or cooperative agreement if an elected governing body with jurisdiction over the local law enforcement agency adopts a resolution objecting to the use of that agency's personnel to enforce Federal laws.

(b) Each contract and cooperative agreement authorizing the exercise of Reclamation law enforcement authority:

(1) Must expire no later than 3 years from its effective date;

(2) May be revoked earlier by either party with written notice;

(3) May be revised or amended with the written consent of both parties;

(4) Must expressly include the requirements for exercise of Reclamation law enforcement authority listed in § 422.10;

(5) Must expressly state that the officer has completed the Federal Bureau of Investigation criminal history review as required by § 422.11; and

(6) Must expressly include the standards of conduct listed in section 422.12.

§ 422.10 Requirements for authorizing officers to exercise Reclamation law enforcement authority.

(a) The CLEO must ensure that each officer receiving an authorization under § 422.7(a):

(1) Is at least 21 years old;

(2) Is certified as a bona fide full-time peace officer under State Peace Officer Standards and Training (POST) requirements, or its functional equivalent or is certified as a Federal law enforcement officer;

(3) Has passed his/her agency's firearms qualifications (which must be consistent with Federal policy) within the 6-month period immediately preceding the granting of the authority;

(4) Re-qualifies to use firearms with all issued service weapons at least semi-annually;

(5) Has neither been convicted of a felony offense, nor convicted of a misdemeanor offense for domestic violence, preventing him/her from possessing a firearm in compliance with section 658 of Public Law 104–208 (the 1996 amendment of the Gun Control Act of 1968);

(6) Is not the subject of a court order preventing him/her from possessing a firearm;

(7) Has no physical impairments that will hinder performance as an active duty law enforcement officer; and

(8) Attends and successfully completes a mandatory orientation session developed by Reclamation to become familiar with Federal laws and procedures and with all pertinent provisions of statutes, ordinances, regulations, and Departmental and Reclamation rules and policies.

(b) Qualification standards for guards as provided in the Departmental Manual or other Department or Reclamation guidance may only be used for those persons hired exclusively to perform guard duties.

§ 422.11 Position sensitivity and investigations.

Each law enforcement contract or cooperative agreement must include a provision requiring the CLEO to certify that each officer who exercises authority under the Act has completed an FBI criminal history check and is satisfactorily cleared.

§ 422.12 Required standards of conduct.

All law enforcement officers authorized to exercise Reclamation authority must adhere to the following standards of conduct:

(a) Be punctual in reporting for duty at the time and place designated by superior officers;

(b) Be mindful at all times and under all circumstances of their responsibility to be courteous, considerate, patient and not use harsh, violent, profane, or insolent language;

(c) Make required reports of appropriate incidents coming to their attention;

(d) When in uniform and requested to do so, provide their name and identification/badge number orally or in writing;

(e) Immediately report any personal injury or any loss, damage, or theft of Federal government property as required by § 422.13;

(f) Not be found guilty in any court of competent jurisdiction of an offense that has a tendency to bring discredit upon the Department or Reclamation;

(g) Not engage in any conduct that is prejudicial to the reputation and good order of the Department or Reclamation; and

(h) Obey all regulations or orders relating to the performance of the unit's duties under the Reclamation contract or cooperative agreement.

§ 422.13 Reporting an injury or property damage or loss.

(a) An officer must immediately report orally and in writing to his/her supervisor any:

(1) Injury suffered while on duty; and

(2) Any loss, damage, or theft of government property.

(b) The written report must be in detail and must include names and addresses of all witnesses.

(c) When an officer's injuries prevent him/her from preparing a report at the time of injury, the officer's immediate supervisor must prepare the report.

(d) The supervisor must submit all reports made under this section to the Reclamation official designated to receive them, as soon as possible after the incident occurs.

[FR Doc. 02–13877 Filed 6–3–02; 8:45 am]

BILLING CODE 4310–MN–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 02–113; FCC 02–150]

Broadcast Services; Television Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission modifies its Rules to permit the Media Bureau to deny digital television construction deadline extension requests.

DATES: Effective July 5, 2002.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Media Bureau, Office of Broadcast Licensing, Video Division, (202) 418–2324.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Order* (''*Order*'') in MM Docket No. 02–113, FCC 02–150, adopted May 16, 2002, and released May 24, 2002. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW, CY–B402, Washington, DC 20554. The *Order* is also available on the Internet at the Commission's website: *http://www.fcc.gov.*

Synopsis of Order

1. The Commission has adopted an Order modifying its rules to permit the Media Bureau delegated authority to deny digital television construction deadline extension requests.

Ordering Clauses

2. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and Section 202(h) of the Telecommunications Act of 1996, this *Order* is adopted.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons set forth in the preamble, amend part 73 of title 47 of the Code of Federal Regulations as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Revise § 73.624(d)(3)(iii) to read as follows:

§ 73.624 Digital television broadcast stations.

* * * * *

(d) * * *

(3) * * *

(iii) The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests shall be referred to the Commission. The Bureau may deny extension requests upon delegated authority.

* * * * *

[FR Doc. 02–13907 Filed 6–3–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–01–8667]

RIN 2127–AI80

Exemption From the Make Inoperative Prohibition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petitions for reconsideration.

SUMMARY: On February 27, 2001, NHTSA issued a final rule establishing a limited exemption from a statutory provision that prohibits specified types of commercial entities from either removing safety equipment or features installed on motor vehicles pursuant to the Federal motor vehicle safety standards or altering the equipment or features so as to adversely affect their performance. The exemption allows repair businesses to modify certain types of Federally-required safety equipment and features when passenger motor vehicles are modified for use by persons with disabilities.

NHTSA received two petitions for reconsideration of the final rule. The petitioners requested that the agency specify that obtaining a prescription from a certified driver rehabilitation specialist is a necessary pre-condition to making vehicle modifications under the exemption. The petitioners also requested that the agency remove several statements from the preamble of the final rule. The agency is denying both requests.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues, you may contact Gayle Dalrymple, Office of Crash Avoidance Standards (Telephone: 202–366–5559) (Fax: 202–366–4329).

For legal issues, you may contact Dion Casey, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On February 27, 2001, NHTSA issued a final rule establishing a limited exemption from a statutory prohibition against specified types of commercial entities from either removing safety equipment or features installed on motor vehicles pursuant to the Federal motor vehicle safety standards (FMVSS) or altering the equipment or features so as to adversely affect their performance. (66 FR 12638, Docket No. NHTSA–01–8667). The exemption allows repair businesses to alter or remove certain types of Federally-required safety equipment and features when they modify passenger motor vehicles for use by persons with disabilities. NHTSA established this exemption for the reasons explained below.

Federal law requires vehicle manufacturers to certify that their vehicles comply with all applicable Federal Motor Vehicle Safety Standards (FMVSSs). (49 U.S.C. 30112). Vehicles must continue to comply until the first retail sale. Federal law also prohibits manufacturers, distributors, dealers, and repair businesses from knowingly making inoperative any part of a device or element of design installed in or on a motor vehicle in compliance with an applicable FMVSS. (49 U.S.C. 30122). NHTSA has interpreted the term ''make inoperative'' to mean any action that removes or disables safety equipment or features installed to comply with an applicable FMVSS, or that degrades the performance of such equipment or features. Violations of this provision are punishable by civil penalties of up to $5,000 per violation.

Individuals with disabilities often are unable to drive or ride in a passenger motor vehicle unless it has been specially modified to accommodate their particular disability. Some modifications, such as the installation of mechanical hand controls or a left foot accelerator, are relatively simple. Others, such as the installation of a joystick that controls steering, acceleration, and braking, can be complex. In some cases, it is necessary to alter or even remove Federally-required safety equipment to make those modifications. However, if a manufacturer, distributor, dealer, or repair business performed these modifications, they would violate the make inoperative provision.[1]

NHTSA has the authority to issue regulations that exempt regulated entities from the make inoperative provision. (49 U.S.C. 30122(c)(1)). Such regulations may specify which equipment and features may be made inoperative, as well as the circumstances under which they may be made so. Before the February 27, 2001 final rule, NHTSA had issued only one such regulation.[2] In all other instances, the agency had addressed the need to remove, disconnect, or otherwise alter mandatory safety equipment by issuing a separate letter to each individual requestor assuring that the agency would not seek enforcement action against the business modifying the vehicle. The vast majority of those instances involved persons seeking modifications to accommodate persons with disabilities.

NHTSA believed that the policy of handling requests for permission to make modifications on an individual, case-by-case basis did not serve the best interests of the driving public, vehicle modifiers, or the agency. NHTSA estimated that close to 2,300 vehicles are modified for persons with disabilities each year, and that this number would increase as the population aged and greater numbers of persons with disabilities pursued employment, travel, and recreational opportunities presented by the passage of the Americans With Disabilities Act (ADA).[3]

NHTSA noted that agency resources for evaluating individual modification requests are limited. Thus, a person with a disability could wait a significant period of time before the agency issued a letter stating its intent not to enforce the make inoperative provision for the vehicle modifications affected. Moreover, the unwieldiness of the case-by-case approach caused many vehicle modifiers to bypass it. Consequently, as the agency noted, only a handful of the vehicles modified annually are covered by a letter from NHTSA granting permission to make federally-required safety equipment inoperative. Most are made without the benefit of any guidance about the opportunities for making modifications without sacrificing safety.

As a result, NHTSA decided to replace the case-by-case approach with a rule exempting certain vehicle modifications from the make inoperative provision. The exemptions are listed in 49 CFR part 595, subpart C.

II. Petitions for Reconsideration and NHTSA's Responses

NHTSA received petitions for reconsideration of the final rule from the Association for Driver Rehabilitation Specialists (ADED) and Louisiana Tech University.

A. Prescriptions

In the final rule, the agency noted that a trained professional often evaluates the driving capabilities of a person with a disability and then writes a prescription detailing needed vehicle modifications. NHTSA considered requiring

> vehicle modifiers to keep a record of vehicle and equipment prescriptions to induce the modifiers to take care that modifications for persons with disabilities were completed in a manner that truly met the particular individual's needs without any unnecessary modifications and to discourage modifiers from circumventing the requirements of the various FMVSSs.

(66 FR at 12651).

NHTSA reviewed the comments and decided not to require such

[1] The make inoperative provision does not apply to vehicle owners.

[2] That regulation permits the installation of retrofit air bag on-off switches under certain circumstances.

[3] 42 U.S.C. 12101, *et seq.*

prescriptions as a condition of the exemption, stating:

> [W]e conclude that it is unlikely that persons without disabilities will try to take advantage of the exemptions in today's final rule because they are so narrowly written and because of the expense of such modifications. Additionally, given the current practice in the industry not to require or rely on prescriptions for relatively simple and inexpensive modifications, we see no need to add an additional burden to an already time-consuming and expensive process.

(66 FR at 12652).

Both ADED and Louisiana Tech requested that the agency reconsider its decision not to require prescriptions as a condition of the exemption. Louisiana Tech claimed that prescriptions are necessary for several reasons. First, prescriptions should be issued by ''certified driver rehabilitation specialists'' who are trained in both occupational therapy and traffic safety and are certified by the ADED. Second, while some adaptive equipment may be simple to install, there are many variables that affect an individual's ability to operate the equipment.[4] Louisiana Tech stated, ''To view the provision of these devices only from the view of the physical functioning necessary for operation is short sighted and compromises the individual's and the public safety.'' Third, according to Louisiana Tech, allowing the disabled person or an equipment dealer to determine the types of modifications that are appropriate is a dangerous practice. Fourth, Louisiana Tech stated that the process is not necessarily expensive or time-consuming, since many individuals need relatively simple adaptive equipment and there are third party funding sources available.

Both ADED and Louisiana Tech also requested that NHTSA require prescriptions for vehicle modifications be written by a ''certified driver rehabilitation specialist, or equivalent.'' The petitioners claimed that the training undergone by certified driver rehabilitation specialists is essential for conducting the clinical aspects of a driver assessment and determining a driver's potential for operating a motor vehicle safely.

NHTSA understands the petitioners' concerns. However, NHTSA does not have the authority to require individuals with disabilities to obtain prescriptions before they have their vehicles modified. The agency does have the authority to condition a repair business's eligibility under the limited exemption to modify a vehicle upon its receipt and keeping on file of a prescription for the modifications to that vehicle. However, NHTSA decided not to exercise this authority for the reasons explained below.

NHTSA does not have the qualifications, nor the authority, to judge who is qualified to conduct a driver evaluation and if there are circumstances under which no evaluation is needed. The basis for our considering a requirement for modifiers to collect prescriptions from clients before making modifications was to ensure that Federal motor vehicle safety standards would not be circumvented unnecessarily.

The petitioners, on the other hand, want to ensure that drivers have the advantage of a physical and cognitive assessment before vehicle modifications are made so that the equipment is correct for their abilities and safe for them to operate. They are also concerned that only safe, able drivers are permitted to drive. NHTSA agrees that the petitioners' goals are laudable. However, those goals are beyond this agency's authority to regulate. Vehicle inspection and driver evaluation, training, and licensing are the regulatory purview of the States.

While NHTSA can place conditions on exemptions from the make inoperative prohibition, the agency cannot directly require drivers to obtain prescriptions in order to ensure that unsafe drivers do not receive vehicle modifications and are therefore prevented from driving, or to ensure that drivers receive only modifications they are capable of using. Such actions are the responsibility of the individual States, because they regulate vehicle registration and driver licensing. NHTSA regulates motor vehicle manufacture and modification. In fact, NHTSA's authority over the modification of vehicles after the first retail sale is limited to those modifications, made by entities for hire, that affect the vehicle's certification to the Federal motor vehicle safety standards.

NHTSA decided not to adopt a requirement under which modifiers would have to obtain prescriptions prior to making vehicle modifications and to keep those prescriptions on file with records of the modifications made because the agency concluded that such a requirement would be an unnecessary and time-consuming burden on the modifier and the consumer. NHTSA did *not* conclude that driver evaluations for modifications are unnecessary. NHTSA believes that driver evaluations are an essential part in the vehicle modification process. The agency simply concluded that a Federal requirement for vehicle modifiers to obtain and keep records of prescriptions for vehicle modifications is unnecessary. The agency believes that requiring prescriptions for vehicle modification is within the regulatory purview of the individual States, and encourages the States to promulgate regulations addressing this issue.

NHTSA also concluded that the agency is not in a position to determine who is qualified to write prescriptions for vehicle modifications. The petitioners requested that NHTSA change the final rule to require that a prescription be written by a ''certified driver rehabilitation specialist or equivalent.'' A certified driver rehabilitation specialist (CDRS) is a person who has fulfilled the requirements for that title as administered by the Association for Driver Rehabilitation Specialists. The agency believes that currently there are fewer than 300 CDRSs in the Unites States, and there may be several States in which no CDRS practices.

In addition, the agency cannot realistically determine whether a person has skills ''equivalent'' to a CDRS. The agency would have to review the credentials of each person making evaluations and determine if he or she were qualified to do so. Such an action is tantamount to licensing individuals to practice driver evaluation. NHTSA believes that the agency has neither the authority nor the qualifications to make such determinations.

Accordingly, the agency is denying the petitioners' request for a Federal requirement that would make it necessary for individuals to obtain prescriptions for vehicle modifications and provide them to vehicle modifiers. Since NHTSA is denying the petitioners' request to require prescriptions, the petitioners' request that prescriptions be written only by a certified driver rehabilitation specialist is moot.

B. Preamble Language

Both ADED and Louisiana Tech expressed concerns about the language that the agency used in the section of the preamble explaining the agency's decision not to require prescriptions. The specific language they objected to is detailed below. The petitioners requested that the agency remove these

[4] ''For example,'' Louisiana Tech stated, ''a left foot accelerator is a 'simple' device [sic] to install and operate. However, these devices are usually used by individuals with amputation or [who] have had head injuries or strokes. An assessment of these individuals is necessary to determine (1) if they can operate the vehicle safely using the device, and (2) if they have the reaction time, cognitive ability, [and] visual-perception skills necessary to perform the driving task safely.''

statements from the preamble to the final rule.

At 66 FR 12652, the agency summarized the comments of those opposed to mandatory prescriptions. These commentors said that requiring prescriptions would unnecessarily increase the burden on the disabled community, increasing costs and limiting access to needed vehicle modifications (particularly in rural areas). Also at 66 FR 12652, the agency stated, ''[G]iven the current practice in the industry not to require or rely on prescriptions for relatively simple and inexpensive modifications, we see no need to add an additional burden to an already time-consuming and expensive process.''

ADED called these statements ''erroneous and irresponsible.'' The petitioner stated that this language ''is in direct conflict with the Rehab Act, which requires states *to not limit access or delay services* to their consumers.'' (Emphasis in original). ADED claimed that Vocational Rehabilitation coordinators are already viewing this language as detrimental to the driver evaluation process. ADED added that there are inadequate data to suggest that the evaluation process constitutes a delay to consumers.

Louisiana Tech also objected to the second statement. The petitioner claimed that the evaluation process is not necessarily time-consuming or expensive since many individuals have relatively simple adaptive needs, and there are third party funding sources available to offset the cost of evaluations.

At 66 FR 12652, the agency referred to a comment made by the American Occupational Therapy Association:

> The American Occupational Therapy Association advocated that prescriptions be issued by either occupational therapists or certified driver rehabilitation specialists. It maintained that occupational therapists are adequately qualified to make driver evaluations based on their specialized training regardless of whether they are certified driver rehabilitation specialists.

Both ADED and Louisiana Tech objected to this statement. Louisiana Tech stated that neither occupational therapists nor traffic safety professionals are adequately trained to perform driver assessments. ADED claimed that occupational therapists are not trained in adaptive driving technology application or on-road assessment, which are necessary to perform driver evaluations.

At 66 FR 12652, the agency referred to comments made by Access Wheels, a vehicle modifier:

> Access Wheels, a modifier, commented that prescriptions are rarely used and then only to justify the payment of the modification costs by a third party. It stated also that the vast majority of modifications involve relative simple, and less expensive vehicle alterations, and thus are modifications for which professional evaluations of capabilities are unnecessary.

ADED objected to the first sentence. The petitioner stated, ''Prescriptions are commonplace in the field of modifications and driver rehabilitation'' and are used for both simple and complex drier adaptations.

Both petitioners objected to the second sentence. Louisiana Tech claimed, ''While there may be some adaptive equipment that appears to be 'simple' to operate, there are many variables that go into an individual's ability to either operate that equipment, perform the driving task or both.'' ADED stated, ''Some of the most difficult evaluations involve simple equipment, because issues revolve around the driver candidate's performance and skill set to use even simple devices.''

Finally, ADED stated that the section of the preamble discussing prescriptions ''appears to recommend that prescriptions are not only not required, but unnecessary.'' ADED noted that this conflicts with a brochure written jointly by ADED, NHTSA, and the National Mobility Equipment Dealers Association (NMEDA) entitled ''Adapting Motor Vehicles for People With Disabilities.'' [5] ADED stated that the brochure devotes a significant amount of text to the evaluation process.

A final rule, which consists of a preamble and regulatory text, is a historical document that itself cannot be changed. However, the regulatory text in a final rule can be amended in a subsequent final rule. Further, any misstatements and errors in the preamble of a final rule can be corrected in a subsequent notice.

NHTSA notes that several of the statements to which the petitioners objected are not statements made by the agency, but statements in the comments of various respondents on the proposed rule. The agency is required to consider all comments, whether they represent the same or divergent points of view. To that end, in the final rule preamble, the agency summarized the comments of proponents and opponents of conditioning the exemption upon the obtaining of prescriptions. The agency specifically and correctly attributed those comments to the individuals or groups who made them.

As to the statements made by NHTSA in the preamble to the final rule, the agency believes that the petitioners have misunderstood the agency's position on driver evaluation prior to the modification of a vehicle. NHTSA does believe that driver evaluation is a very important element to a successful vehicle modification for persons with disabilities, and that evaluations should be performed whenever possible. However, the agency believes that requiring persons with disabilities to obtain prescriptions before having their vehicle modified is within the regulatory purview of the States, which regulate driver evaluation, training, and licensing, and vehicle inspection. The agency does not wish to establish such a requirement indirectly by conditioning a vehicle modifier's ability to take advantage of the limited exemption upon the modifier's obtaining a prescription from the person requesting the modifications. The agency also believes it is not qualified to judge who should conduct a driver evaluation and whether there are circumstances under which no evaluation is needed.

Finally, NHTSA addressed above the following statement made by the agency in the final rule preamble: ''[G]iven the current practice in the industry not to require or rely on prescriptions for relatively simple and inexpensive modifications, we see no need to add an additional burden to an already time-consuming and expensive process.'' As noted above, the agency did not conclude that prescriptions for modifications are not beneficial. The agency believes that driver evaluations are an essential part in the vehicle modification process. The agency simply concluded that, for NHTSA's purposes, a new Federal requirement for vehicle modifiers to obtain such prescriptions from persons seeking modifications and keep records of them would be an unnecessary and time consuming burden on the modifier and the consumer.

For these reasons, the agency cannot remove these statements from the preamble of the final rule and is denying the petitioners' request to do so.

III. Conclusion

For the reasons stated above, the agency is denying the petitions for reconsideration.

Issued: May 29, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–13968 Filed 6–3–02; 8:45 am]

BILLING CODE 4910–59–P

[5] DOT HS 809 014, December 1999.

Proposed Rules

Federal Register
Vol. 67, No. 107
Tuesday, June 4, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG84

Financial Information Requirements for Applications To Renew or Extend the Term of an Operating License for a Power Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to amend its regulations to remove the requirement that non-electric-utility power reactor licensees submit financial qualifications information in their license renewal applications, and to add a new requirement that licensees of nuclear power reactors who are electric utilities reorganizing as non-electric-utility entities without a license transfer must notify the NRC and submit information on their financial qualifications. The proposed rule would reduce unnecessary regulatory burden for licensees seeking renewal of operating licenses, and ensure that licensees reorganizing as non-electric-utility entities continue to be financially qualified to operate their facilities and maintain the public health and safety.

DATES: The comment period expires on August 19, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to ensure consideration of comments received on or before this date.

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

You also may provide comments via the NRC's interactive rulemaking Website at (*http://ruleforum.llnl.gov*). This site provides the capability to upload comments as files (any format), if your Web browser supports that function. For information about the interactive rulemaking Website, contact Ms. Carol Gallagher at 301–415–5905 or e-mail *cag@nrc.gov.*

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Public Electronic Reading Room on the NRC Website at *www.nrc.gov.*

FOR FURTHER INFORMATION CONTACT: George J. Mencinsky, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3093, e-mail *gjm@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 182.a. of the Atomic Energy Act of 1954, as amended (AEA), provides that ''each application for a license * * * shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant * * * as the Commission may deem appropriate for the license.'' The NRC's regulations governing financial qualifications reviews of applications for licenses to construct or operate nuclear power plants are provided in 10 CFR 50.33(f).

Section 50.33(f)(2) currently requires all applicants for initial operating licenses and renewal of operating licenses to submit financial qualifications information, except applicants for and holders of operating licenses for nuclear power reactors that are electric utilities. This provision, adopted on September 12, 1984 (49 FR 35747), was based on the premise that the ratemaking process ensures that an applicant that is an electric utility and a holder of an operating license will have funds to operate the plant safely. Because entities other than electric utilities did not have recourse to ratemaking, they were required to submit information on financial qualifications in accordance with § 50.33(f), and the NRC was required to make a finding of financial qualification for these nonutility entities under § 50.57(a)(4).

In issuing the License Renewal Rule, 10 CFR part 54 (56 FR 64943; December 13, 1991), the Commission reaffirmed that the basis of the 1984 rulemaking for eliminating financial qualifications review for electric utilities applies not only for the term of the original license, but also for the period of operation covered by a renewed license (56 FR at 64968). However, the findings required to issue a renewed license based on the standards contained in 10 CFR 54.29 do not require a finding regarding financial qualifications for non-electric-utility entities seeking a renewal license. The 1991 rule left unchanged the requirement in § 50.33(f)(2) that license renewal applicants that are not electric utilities submit financial qualifications information in their renewal applications and extended the 1984 rule's finding to applicants for renewal of operating licenses. The revision to 10 CFR part 54 published on May 8, 1995 (60 FR 22461), did not amend this requirement. Thus, while non-electric-utility entities are required to submit financial qualifications information, there is no requirement for a finding of financial qualifications for non-electric-utility entities, and no basis for the lack of such a finding requirement.

Since the 1995 rulemaking, the NRC has received numerous requests for license renewals and has granted eight renewed licenses for four plant sites to electric utilities. However, because of ongoing deregulation in the power market, new entities other than electric utilities may be created to become licensees of nuclear power plants. Some of these entities may decide to renew their licenses. Under the current rule they would be required to submit financial qualifications information under § 50.33(f)(2). Moreover, despite the language of § 54.29, the NRC must make a case-by-case finding of financial qualifications.

Such a case-by-case determination would be resource-intensive and may result in delays in approving renewal applications. The NRC staff has reviewed the license transfer process to determine if there was a basis in the regulatory process that would obviate the need for such a finding at license renewal. The NRC staff determined that, with one exception, the NRC does not need the financial qualifications

information from license renewal applicants that are not electric utilities since the NRC can obtain and track financial qualifications information from the licensees through means other than the license renewal process. The exception is the potential gap in the financial qualifications regulation for non-electric-utility entities when a licensee transitions from an electric utility to an entity other than an electric utility without transferring its license. Although almost all utilities transfer to non-utility status with a license transfer, this regulatory gap, if not closed, would prevent the NRC from making a generic determination that financial qualifications review is unnecessary at license renewal. Therefore, in this proposed rule the NRC proposes to adopt a provision to close the gap.

Regulatory Oversight of Licensees' Financial Qualifications and Discussion of Proposed Rule

With one exception, the NRC has provisions in its regulations to evaluate a nuclear power reactor applicant's or licensee's financial qualifications at several points—at initial licensing, before license transfers, and when circumstances warrant an ad hoc request for additional financial information. In addition, the NRC staff informally monitors the financial trade press for information on its licensees' financial situations. The one exception relates to a situation when a licensee transitions from an electric utility to an entity other than an electric utility without transferring its license. This proposed rule would rectify the regulatory gap by imposing a request for financial qualifications information from the licensee. With the addition of this provision, the Commission believes it has a basis for concluding that it is unnecessary to review financial qualifications information explicitly during the license renewal process for holders of operating licenses for nuclear power reactors. The NRC does not believe that there are any financial circumstances uniquely associated with license renewal that warrant a concomitant financial review.

The NRC staff relies on the requirement in 10 CFR 50.33(f)(2) to obtain financial qualifications information on applicants seeking renewal of nonpower reactor operating licenses. The license renewal process for nonpower reactors, unlike the license renewal process for power reactors, includes a financial qualifications review. The NRC staff does not propose to amend this requirement since the nature of nonpower reactor operations does not permit the same level of ongoing financial qualifications oversight, thus necessitating a review of financial qualifications for nonpower reactor licensees at renewal.

Initial Licensing Reviews

The NRC performs financial qualifications reviews during initial licensing. These reviews form part of the licensing basis that the licensee must maintain for the 40-year term of the initial license and for any license renewal period. Financial qualifications reviews at the operating license stage distinguish between license applicants that are electric utilities as defined in 10 CFR 50.2 and those that are not. Applicants other than electric utilities are required to submit estimates for total annual operating costs for each of the first five years of operation of the facility, and indicate the sources of funds to cover these costs. The NRC evaluation of the financial qualifications of an entity other than an electric utility applicant is based on the submitted 5-year projections of income and expenses and on current information from a number of major financial rating service publications. The NRC publishes the results of its evaluation in a safety evaluation report. The NRC's regulations do not require additional formal financial qualifications reviews at scheduled intervals.

License Transfer Reviews

A license transfer under 10 CFR 50.80 may occur at any time during the period of the license. The NRC also reviews the financial qualifications of non-electric-utility applicants seeking to become licensees through direct license transfers (plant sales), and considers changes in the financial qualifications of an existing licensee, whether or not it is an electric utility, that might occur in connection with an indirect license transfer by a merger, acquisition, or restructuring action. For a direct license transfer, a non-electric-utility applicant must submit all the information required under § 50.33(f).

Informal Screening of Financial and Nuclear Industry Trade Press and Other Information Sources

To keep abreast of deregulation and other developments potentially affecting its power reactor licensees, the NRC staff screens the financial and trade press and other information sources (e.g., State legislative reports) to determine whether a licensee or license applicant remains an electric utility or otherwise requires additional review of its financial qualifications. To date, all utility-to-nonutility transitions by NRC power reactor licensees have been accomplished through restructurings that involved license transfers. The NRC examines license transfers to determine whether a proposed transferee is, among other requirements, financially qualified to conduct the activities authorized by a license. If the licensee becomes an entity other than an electric utility without going through a license transfer, the NRC believes that it will become aware of the change through its informal screening process. The NRC can then request additional information under § 50.33(f)(4), as described in the next section.

Ad Hoc Reviews Under 10 CFR 50.33(f)(4)

Section 50.33(f)(4) states: ''The Commission may request an established entity or newly formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information to be appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility.'' This section permits the NRC to require license applicants or licensees to submit relevant financial information on the qualifications of the licensee to manage licensed activities at any time.

Proposed Requirement for Additional Information That May Not Be Otherwise Obtained Under the NRC's Financial Qualifications Review Framework

In some situations a licensee may transition from an ''electric utility,'' as defined in 10 CFR 50.2, to a company whose rates are not regulated by a public utility commission or the Federal Energy Regulatory Commission on a cost of service basis. If such a transition were to occur in the absence of a license transfer, the NRC would then have no formal process to evaluate the licensee's financial qualifications (although, as discussed previously, the NRC's informal monitoring process would identify such transitions and could trigger, if warranted, a request for additional information pursuant to § 50.33(f)(4)). Therefore, the NRC proposes to create 10 CFR 50.76, a requirement segregated from § 50.33(f)(2), which would require licensees that are transitioning from an electric utility to a non-electric-utility, without going through license transfers, to submit financial information sufficient to allow the NRC to determine whether the licensee remains financially qualified to conduct the activities authorized by the license. Although the

NRC expects that this type of transition will occur rarely, if at all, this requirement would ensure a financial qualifications review resulting from all relevant triggering events and, thereby, enhance public confidence while maintaining regulatory efficiency and effectiveness.

The proposed new section 50.76 will be created to provide a separation from § 50.33, since the latter section focuses on applicants rather than licensees.

Retention of Nonpower Reactor Financial Reviews at License Renewal

The NRC will retain the financial qualifications requirements in § 50.33(f)(2) for nonpower reactor (NPR) applicants that wish to renew or extend their licenses. Nonpower reactor licenses are generally renewed for 20 years. The NRC does not normally perform follow-up financial reviews after the initial 20-year license is issued. The NRC staff does not normally follow changes in NPR licensee financial qualifications because NPR owners are primarily financially stable nonprofit educational or research institutions, either privately, State, or Federally owned, and do not report financial information to sources readily available to the NRC. Additionally, license transfers for NPRs and the associated financial reviews are rare. A small number of NPRs are owned and operated by private companies. Therefore, financial qualification problems are not likely to become obvious, at least in part because of the unavailability of accessible information, as cited above. In some cases, the NRC has found financial weaknesses or ambiguities during NPR license renewals that it would not have discovered otherwise. As a result of the review, the NRC was able to require the licensee to take corrective action. Therefore, the NRC considers it appropriate to review NPR licensees' financial qualifications when they apply to renew their licenses. The burden on NPR licensees to demonstrate their financial qualifications every 20 years is offset by the assurance that licensee management is committed to continued operation.

Conclusions on Eliminating Financial Qualifications Reviews for Power Reactor Licensees at License Renewal

Section 50.33(f) requires all applicants for initial and renewed operating licenses to submit financial qualifications information, except applicants for and holders of operating licenses for nuclear power reactors that are electric utilities. Section 50.33(f)(2) requires an entity other than an electric utility that seeks to renew its operating license for a nuclear power plant submit the same financial information in its application that is required for an application for an initial license.

The NRC does not believe that there are any financial circumstances uniquely associated with license renewal that warrant a separate financial review. First, the NRC's regulatory processes for financial qualifications reviews adequately ensure that the NRC can take appropriate regulatory action when warranted by changes in a licensee's financial qualifications. Second, the submission of financial qualifications information and a finding of financial qualifications for a nuclear power plant licensee at the license renewal stage, by itself, is not likely to have any impact on a licensee's financial qualifications, and therefore should not be a factor in the renewal decision. In contrast, there are valid regulatory reasons for conducting specified financial qualifications reviews at other stages—i.e., at initial licensing, when an applicant's financial qualifications need to be determined in accordance with the AEA's requirements; at the time of a license transfer, when deregulation initiatives are likely to affect an applicant's or licensee's financial qualifications through restructuring, plant sales, or other events; or at times of special circumstances, when ad hoc reviews under § 50.33(f)(4) may be warranted.

For these reasons, the NRC proposes to change the requirement in the last sentence of § 50.33(f)(2) with respect to entities other than electric utilities seeking renewal of operating licenses for nuclear power reactors. The proposed rule would (1) eliminate the need for such entities to provide financial qualifications information as part of the license renewal process, (2) retain the existing requirement in § 50.33(f) for nonpower reactors to provide financial qualifications information, and (3) add a new § 50.76, ''Licensee's change of status; financial qualifications.'' Section 50.76 would require that any electric utility power reactor licensee that becomes an entity other than an electric utility without transferring the license must provide the same financial information that is required for obtaining an initial operating license. The proposed rule would not affect the submission of financial qualifications information and the need for a finding of financial qualifications with respect to direct transfers of nuclear power plant operating licenses, nor would the rule affect the review of whether an indirect transfer would change the respective licensee's financial qualifications.

The NRC believes this proposed rule would be consistent with the NRC's Strategic Goals of making NRC activities and decisions more effective and efficient and reducing unnecessary regulatory burden. The proposed rule would help advance these goals by eliminating the need for ''entities other than electric utilities'' to submit information on financial qualifications, as is the case now for electric utilities, in connection with license renewal, and would make the financial qualifications review requirements consistent with the bases of the License Renewal rule in 10 CFR part 54, which does not require a finding of financial qualifications for those power reactor licensees applying for a renewed nuclear power plant operating license. The proposed rule would not have an adverse impact on maintaining safety; the provisions in § 50.33(f)(4) already ensure that financial information can be obtained from a licensee whenever the NRC considers this information appropriate.

Section-by-Section Analysis

10 CFR 50.33, Contents of applications; general information.

Section 50.33(f)(2) would be amended to replace a requirement that now states license renewal applicants must provide financial qualifications information with a requirement that states power reactor applicants for license renewal no longer need to provide financial qualifications information. Nonpower reactor applicants, on the other hand, would continue to submit financial qualifications information in the applications as is currently required. A new sentence would be added to § 50.33(f)(2) to specify that nonpower reactor license renewal applicants must continue to submit financial qualifications information in their applications.

10 CFR 50.76, Licensee's change of status; financial qualifications.

Section 50.76, a new requirement segregated from § 50.33(f)(2), would be adopted to cover situations in which a licensee changes from an electric utility to a non-electric-utility, *i.e.,* a company that cannot obtain revenue from the cost of service ratemaking process, in a manner other than a license transfer under 10 CFR 50.80. The NRC proposes to require licensees that are transitioning from an electric utility to a non-electric-utility entity without transferring their licenses to submit financial information pursuant to the requirements of this new section. If a

licensee will cease to be an electric utility, the NRC proposes that the licensee shall notify the NRC 75 days before the transition and provide the financial information at that time.

Issues for Public Comment

The NRC encourages comments on the content, level of detail, and the implementation of the proposed amendments. Suggestions or alternatives other than those described in this document and estimates of the cost of implementation are encouraged.

The NRC is particularly interested in receiving comments on the following issues related to this proposed rule:

1. Are there rulemaking alternatives to this proposed rule that were not considered in the regulatory analysis for this proposed rule?

2. Should the requirement that nonpower reactor licensees provide financial qualifications information when they apply for license renewal be eliminated? On what basis?

3. Are the regulations dealing with financial qualifications oversight sufficiently flexible not to require this information from non-electric-utility applicants seeking license renewals for power reactors?

Availability of Documents

This **Federal Register** document, the regulatory analysis, and the environmental assessment are available at the NRC Public Document Room at 11555 Rockville Pike, Rockville, Maryland; through the NRC's interactive rulemaking Website at *http://ruleforum.llnl.gov;* and through the NRC's Public Electronic Reading room at *http://www.nrc.gov/reading-rm.html.*

The ADAMS accession number of the notice is ML020700359. The regulatory analysis number is ML020700372. The environmental assessment number is ML020700379.

Single copies of the **Federal Register** notice, regulatory analysis, and environmental assessment may be obtained from George J. Mencinsky, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (301–415–3093), or *gjm@nrc.gov.*

Plain Language

The Presidential memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Government write in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in this proposed rule to improve readability of the existing language of those provisions being revised. These types of changes are not discussed further in this document. The NRC requests comment on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address given in the ADDRESSES section.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standard bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC would eliminate the requirement that applicants for power reactor license renewal provide financial qualifications information, and add a new requirement for submission of financial information on electric utilities holding operating licenses for nuclear power reactors, who cease to be electric utilities in a manner other than a license transfer under 10 CFR 50.80. This proposed rule would not constitute a standard that establishes generally applicable requirements, and the requirement to use a voluntary consensus standard is not applicable.

Finding of No Significant Environmental Impact: Availability

The Commission has determined that under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51 that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

There are no significant radiological environmental impacts associated with the proposed action, since the proposed action only addresses the submission of financial information to the NRC. The proposed action does not involve nonradiological plant effluents and has no other environmental impact. Therefore, NRC expects that no significant environmental impact would result from the proposed rule.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. However, the general public should note that the NRC is seeking public participation. The NRC has also committed to complying with Executive Order (E.O.) 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' dated February 11, 1994. The NRC evaluated environmental justice for this environmental assessment and has determined that there are no disproportionate high and adverse impacts on minority and low-income populations. In the letter and spirit of E.O. 12898, the NRC is requesting public comment on any environmental justice considerations or questions that the public thinks may be related to this proposed rule but somehow was not addressed. E.O. 12898 describes environmental justice as ''identifying and addressing, as appropriate, disproportionately high or adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.'' Comments on any aspect of the environmental assessment, including environmental justice, may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of the environmental assessment and this proposed rule to all State Liaison Officers and requested their comments.

Paperwork Reduction Act Statement

This proposed rule eliminates the burden on non-electric-utility power reactor licensees to submit financial qualifications information upon license renewal as required by the current § 50.33(f)(2). However, power reactor licensees that become non-electric-utility power reactor entities without transferring the license would still be required to provide this information under new § 50.76. The public burden reduction for this information collection is estimated to average 100 hours per request. Because the burden reduction for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The regulatory analysis may be examined, and/or copied for a fee, at the NRC's

Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The Commission requests public comment on the regulatory analysis. Comments should be submitted to the NRC in accordance with the instructions in the **ADDRESSES** section of this notice.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, as amended, 5 U.S.C. 605(b), the Commission certifies that this proposed rule would not, if adopted, have a significant economic impact on a substantial number of small entities. This proposed rule would affect only the renewal of nuclear power reactor licenses. The companies that own these reactors are not ''small entities'' as defined in the Regulatory Flexibility Act or the Size Standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this proposed rule. The proposed rule would (1) permissively relax the current requirement in § 50.33(f) for submission of financial qualifications information by entities other than electric utilities seeking renewal of their nuclear power plant operating licenses, and (2) impose a new requirement for submission of financial information on electric utilities who hold operating licenses for nuclear power reactors, who cease to be electric utilities in a manner other than a license transfer under 10 CFR 50.80. Such information collection and reporting requirements do not constitute regulatory actions to which the backfit rule applies. In addition, with respect to the permissive relaxation in § 50.33(f), such relaxations do not ''impose'' a requirement, which is an essential element of ''backfitting'' as defined in § 50.109(a)(1).

Accordingly, the proposed rule's provisions do not constitute a backfit and a backfit analysis need not be performed. However, the staff has prepared a regulatory analysis that identifies the benefits and costs of the proposed rule and evaluates other options for addressing the identified issues. As such, the regulatory analysis constitutes a ''disciplined approach'' for evaluating the merits of the proposed rule and is consistent with the intent of the backfit rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 and 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.33, paragraph (f)(2) is revised to read as follows:

§ 50.33 Contents of applications; general information.

* * * * *

(f) * * *

(2) If the application is for an operating license, the applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. The applicant shall submit estimates for total annual operating costs for each of the first five years of operation of the facility. The applicant shall also indicate the source(s) of funds to cover these costs. An applicant seeking to renew or extend the term of an operating license for a power reactor need not submit the financial information that is required in an application for an initial license. Applicants to renew or extend the term of an operating license for a nonpower reactor shall include the financial information that is required in an application for an initial license.

* * * * *

3. Section 50.76 is added to read as follows:

§ 50.76 Licensee's change of status; financial qualifications.

An electric utility licensee holding an operating license (including a renewed license) for a nuclear power reactor, no later than 75 days prior to ceasing to be an electric utility in any manner not involving a license transfer under § 50.80 of this part, shall provide the NRC with the financial qualifications information that would be required for obtaining an initial operating license as specified in § 50.33(f)(2). The financial qualifications information must address the first full five years of operation after the date the licensee ceases to be an electric utility.

Dated at Rockville, Maryland, this 29th day of May 2002.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–13903 Filed 6–3–02; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702, 741 and 747

Prompt Corrective Action

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: In 2000, the National Credit Union Administration (NCUA) adopted a comprehensive system of prompt corrective action consisting of minimum capital standards for federally-insured credit unions and corresponding remedies for restoring net worth. After six quarters of implementation experience, NCUA requests public comment on proposed revisions and adjustments intended to improve and simplify the system of prompt corrective action.

DATES: Comments must be received on or before August 5, 2002.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. *You are encouraged to fax comments to (703) 518–6319 or e-mail comments to regcomments@ncua.gov*

instead of hand-delivering them. Whichever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT:

Technical: Herbert S. Yolles, Deputy Director, Office of Examination and Insurance, at the above address or by telephone (703) 518–6360. *Legal:* Steven W. Widerman, Trial Attorney, Office of General Counsel, at the above address or by telephone (703) 518–6557.

SUPPLEMENTARY INFORMATION:

A. Background
1. Existing Part 702
2. Where Credit Unions Stand Today
3. Request for Comments
B. Section-by-Section Analysis of Proposed Revisions
1. Section 702.2—Definitions
2. Section 702.101—Measure and effective date of net worth classification
3. Section 702.107—Alternative component for loans sold with recourse
4. Section 702.108—Risk mitigation credit
5. Section 702.201—PCA for ''Adequately Capitalized'' credit unions.
6. Section 702.204—PCA for ''Critically Undercapitalized'' credit unions
7. Section 702.205—Consultation with State officials on proposed PCA.
8. Section 702.206—Net worth restoration plans
9. Section 702.303—PCA for ''Adequately Capitalized'' new credit unions
10. Section 702.304—PCA for ''Moderately Capitalized,'' ''Marginally Capitalized'' and ''Minimally Capitalized'' new credit unions
11. Section 702.305—PCA for ''Uncapitalized'' new credit unions
12. Section 702.306—Revised business plans for new credit unions
13. Section 702.401—Charges to the regular reserve
14. Section 702.403—Payment of dividends
15. Section 741.3—Adequacy of reserves
16. Section 747.2005—Enforcement of orders

The following acronyms are used throughout:

CUMAA Credit Union Membership Access Act
DSA Discretionary Supervisory Action
MBL Member Business Loan
MSA Mandatory Supervisory Action
NWRP Net Worth Restoration Plan
OCA Other Corrective Action
PCA Prompt Corrective Action
RBNW Risk-Based Net Worth
RBP Revised Business Plan
RMC Risk Mitigation Credit
ROA Return on assets

Throughout the Supplementary Information section, citations to part 702 refer to the current version of 12 CFR 702 *et seq.* (2002) and are abbreviated to the section number only.

A. Background

1. Existing Part 702

In 1998, the Credit Union Membership Access Act (''CUMAA''), Pub. L. No. 105–219, 112 Stat. 913 (1998), amended the Federal Credit Union Act (''the Act'') to require NCUA to adopt by regulation a system of minimum capital standards for federally-insured ''natural person'' credit unions. 12 U.S.C. 1790d *et seq.* This system, known as ''prompt corrective action'' (''PCA''), is indexed to five statutory net worth categories.

In February 2000, the NCUA Board adopted part 702 and subpart L of part 747, establishing a comprehensive system of PCA. 65 FR 8560 (Feb. 18, 2000). Subpart A of part 702 consists of standards for calculating a credit union's net worth and classifying it among the five statutory net worth categories. 12 CFR 702.101–108. Subpart B combines mandatory and discretionary supervisory actions indexed to the five categories, as well as PCA-based conservatorship and liquidation. §§ 702.201–206. Subpart C consists of a system of PCA for ''new'' credit unions. §§ 702.301–307. Subpart D prescribes reserve accounts, requirements for full and fair disclosure of financial condition, and prerequisites for paying dividends consistent with the earnings retention requirement in subpart B. §§ 702.401–403. In addition to these substantive provisions, subpart L of part 747 established an independent review process allowing affected credit unions and officials to challenge PCA decisions. 12 CFR 747.2001 *et seq.* (2000).

In July 2000, the NCUA Board integrated a risk-based net worth (''RBNW'') component into part 702, as CUMAA mandated. 65 FR 44950 (July 20, 2000). The RBNW requirement applies to non-''new'' credit unions, § 702.102(a)(1)–(2), that satisfy minimum RBNW and asset size requirements, § 702.103, and whose portfolios of assets and liabilities carry above average risk exposure. § 702.104. A credit union whose net worth ratio does not meet its RBNW requirement under any of three methods (standard calculation, alternative components, risk mitigation credit) is classified to the ''undercapitalized'' net worth category. 12 U.S.C. 1790d(c)(1)(C)(ii); § 702.102(a)(3).

Part 702 and subpart L of part 747 were effective August 7, 2000, and first applied to activity in the fourth quarter of 2000 as reflected in the Call Report for that period. The RBNW component of part 702 was effective January 1, 2001, and first applied (for quarterly Call Report filers) to activity in the first quarter of 2001 as reflected in the Call Report for that period.[1]

At the conclusion of the initial PCA rulemaking process, the NCUA Board directed the ''PCA Oversight Task Force'' (a working group consisting of NCUA staff and State regulators) to review at least a full year of PCA implementation and recommend necessary modifications. 65 FR at 44964. The proposed revisions presented below for comment are a product of that review.

2. Where Credit Unions Stand Today

a. Net worth classification

As of December 31, 2001, federally-insured credit unions are classified as follows within the PCA net worth categories:

TABLE A.—NET WORTH CLASSIFICATION OF NON-''NEW'' FICUS

Net worth category	Net worth ratio	# of non-''new'' FICUs	Percent of all non-''new'' FICUs
''Well Capitalized''	7% or greater	9634	96.96%
''Adequately Capitalized''	6% to 6.99%	210	2.11%
''Undercapitalized''	4% to 5.99%	53	0.53%
''Significantly Undercapitalized''	2% to 3.99%	23	0.24%
''Critically Undercapitalized''	Less than 2%	15	0.15%

[1] Part 702 has since been amended twice—once to incorporate limited technical corrections, 65 FR 55439 (Sept. 14, 2000), and once to delete sections made obsolete (§§ 702.101(c)(2)–(3) and 702.103(b)) by the recently adopted uniform quarterly schedule for filing Call Reports regardless of asset size. 67 FR 12459 (March 19, 2002).

TABLE B.—NET WORTH CLASSIFICATION OF ''NEW'' FICUS

''New'' net worth category	Net worth ratio	# of ''new'' FICUs	Percent of all ''new'' FICUs
''Well Capitalized''	7% or greater	0	0
''Adequately Capitalized''	6% to 6.99%	6	12.50%
''Moderately Capitalized''	3.5% to 5.99%	19	39.58%
''Marginally Capitalized''	2% to 3.49%	8	16.67%
''Minimally Capitalized''	0% to 1.99%	10	20.83%
''Uncapitalized''	Less than 0%	5	10.42%

b. RBNW requirement

As of December 31, 2001, 399 federally-insured credit unions—4 percent of the total—were required to meet an RBNW requirement. Of these, 393 met the requirement using the ''standard calculation.'' § 702.106. The six that failed under the ''standard calculation'' met their RBNW requirement using the ''alternative components.'' § 702.107. To date, no credit union has completely failed its RBNW requirement, and no credit union has applied for a ''Risk Mitigation Credit.'' § 702.108.

3. Request for Comments

Through this notice, NCUA invites public comment on a series of proposed revisions to part 702 prompted by six quarters of experience implementing PCA. To facilitate consideration of the public's views, we ask commenters to organize and identify their comments by corresponding part 702 section number and/or topic and to include general comments, if any, in a separate section at the end. Also, for purposes of this rulemaking, please confine your comments to the NCUA regulations that implement PCA—part 702 and subpart L of part 747.

In addressing the proposed revisions, we urge commenters to recognize that, while given substantial discretion in certain areas of PCA, NCUA lacks the authority to override or expand by regulation the requirements, limitations and definitions that CUMAA expressly prescribed. *See* 12 U.S.C. 1790d(n) (forbidding action ''in derogation'' of what CUMAA prescribes). For example, NCUA lacks the statutory authority to expand CUMAA's express, limited definition of ''net worth'' for PCA purposes. 12 U.S.C. 1790d(o)(2)(A). This rulemaking will not address comments advocating modifications to part 702 that exceed the scope of NCUA's statutory authority.

To ensure that the system of PCA for federally-insured credit unions is ''workable, fair and effective in light of the cooperative character of credit unions,'' S. Rep. No. 193, 105th Cong., 2d Sess. 14 (1998), the NCUA Board welcomes broad public input addressing the revisions proposed below.

B. Section-by-Section Analysis of Proposed Revisions

PART 702—PROMPT CORRECTIVE ACTION

1. Section 702.2—Definitions

a. *Dividend.* Subpart D of part 702 sets various restrictions and requirements regarding the payment of dividends to members. §§ 702.403, 702.401(d), 702.402(d)(5). However, that subpart overlooks the fact that many State-chartered credit unions pay interest on shares rather than dividends. To correct this oversight, the proposed rule adds to § 702.2 a new subsection (e) defining a ''dividend'' as ''a distribution of earnings by a federally-insured credit union and a payment of interest on a deposit by a State-chartered credit union.''

b. *Senior executive officer.* The authority to dismiss a director or senior executive officer is a discretionary supervisory action (''DSA'') available when a credit union is classified ''undercapitalized'' or lower. §§ 702.202(b)(8), 702.203(b)(8), 702.204(b)(8). *See also* 12 CFR 747.2004(a) (review of dismissal of senior executive officer). The authority to order the hiring of a ''qualified senior executive officer,'' §§ 702.204(b)(9), and to limit the compensation paid to a senior executive officer, § 702.204(b)(10), are both DSAs available when a credit union is classified ''critically undercapitalized.'' However, none of these provisions defines who is a ''senior executive officer.'' To correct this oversight, the proposed rule adds a new subsection (j) to § 702.2, incorporating by reference the definition of a ''senior executive officer'' in 12 CFR 701.14(b)(2). That section defines a ''senior executive officer'' as ''a credit union's chief executive officer * * *, any assistant chief executive officer (*e.g.,* any assistant president, any assistant vice president or any assistant treasurer/manager) and the chief financial officer.''

c. *Total assets.* Among the methods available to measure a credit union's total assets for PCA purposes is ''[t]he average of quarter-end balances of the four most recent calendar quarters.'' § 702.2(l)(1)(i). In practice, this has been a source of confusion to credit unions; some think ''the four most recent calendar quarters'' refers to the four consecutive quarters *preceding* the then-current quarter, while others think it means the then-current quarter *plus* the preceding three consecutive quarters. To end this confusion, the proposed rule redefines the ''average quarterly balance'' as the average of quarter-end balances of ''the four most recent calendar quarters.''

Another of the methods available to measure a credit union's total assets is the ''quarter end balance of the calendar quarter as reported in the credit union's Call Report, and for semi-annual filers as calculated for the quarters ending March 31 and September 30.'' § 702.2(l)(1)(iv). The proposed rule deletes the exception for the two quarters in which Call Reports are not filed because semiannual Call Reporting has been abolished by the recently adopted uniform quarterly schedule for filing Call Reports regardless of asset size. 67 FR 12457 (March 19, 2002).

2. Section 702.101—Measures and Effective Date of Net Worth Classification

On the effective date of a credit union's net worth classification, it must begin to comply with the mandatory supervisory actions (''MSAs''), if any, applicable to its net worth category, *e.g.,* § 702.202(a). The effective date also triggers part 702's timetables for whatever further action is required in the case of a ''critically undercapitalized'' credit union. §§ 702.204(c)(1), 702.204(c)(3), 702.206(a)(1). Relying on the quarter-end calculation of net worth, the effective date of classification in nearly all cases is the ''quarter-end effective date''—''the last day of the calendar month following the end of the calendar quarter.'' § 702.101(b)(1). However, § 702.101(b)(2) presently allows for an

interim effective date between quarter-ends when ''the credit union's net worth ratio is recalculated by or as a result of its most recent final report of examination.''

An interim effective date has occasionally replaced the quarter-end effective date when an NCUA examination is conducted after the quarter-end effective date and it discloses not only that the credit union erred in calculating its net worth ratio, but that the corrected ratio puts it in a different net worth category. Classification to the proper net worth category is not retroactive to the prior quarter-end effective date. Rather, the date the credit union receives the final examination report becomes the new effective date of classification to the proper net worth category, triggering the corresponding MSAs.[2]

Section 702.101(b)(2) has been difficult to implement for several reasons. First, it lacks standards that limit recalculation of net worth to instances of error or misstatement, and that preclude recalculation based simply on changed data or conditions occurring since the last Call Report (which changes will be reflected in the next quarter's Call Report). Second, experience shows that an error or misstatement in calculating net worth may emerge from a supervision contact other than an examination, yet notice to the credit union to correct its net worth ratio must await the ''most recent report of final examination.'' Third, postponing notice of the corrected net worth ratio until receipt of the final report of examination may deprive the credit union of the opportunity to take corrective action sooner. To rectify these flaws, subsection (b)(2) is revised to define the ''corrected net worth category'' as ''the date the credit union receives subsequent written notice * * * of a decline in net worth category due to correction of an error or misstatement in the credit union's most recent Call Report.''

3. Section 702.107—Alternative Component for Loans Sold With Recourse

Among the eight risk portfolios used to calculate an applicable RBNW requirement is the portfolio of ''loans sold with recourse,'' generally consisting of the outstanding balance of loans sold or swapped with full or *partial* recourse. § 702.104(f). In the ''standard calculation'' of the RBNW requirement, the entire balance of the ''loans sold with recourse'' risk portfolio is assigned a single, uniform risk-weighting of 6 percent, § 702.106(f), regardless whether it includes loans sold with only *partial* recourse against the seller. There is no ''alternative component'' for adjusting the risk-weighting of this portfolio to reflect the limited credit risk associated with loans sold with partial recourse.[3]

Since the adoption of part 702, recourse loan activity among credit unions has nearly doubled, and loan programs have emerged that allow a credit union that sells fixed-rate mortgage loans, for example, to contractually limit the extent of the purchaser's recourse to the seller.[4] This enables credit unions to readily cap their credit risk exposure from the sale of recourse loans. In view of these developments, a single, uniform risk-weighting that assumes maximum credit risk exposure is inequitable.

Therefore, the NCUA Board proposes to add a fourth ''alternative component'' to § 702.107 that would allow variable risk-weighting that corresponds to the actual credit risk exposure of loans sold with a contractual recourse obligation of less than 6 percent. The ''alternative component'' proposed in new § 702.107(d) is the sum of two risk-weighted buckets. The first bucket consists of the amount of loans sold with contractual recourse obligations of six percent or greater and is risk-weighted at a uniform six percent. § 702.107(d)(1). The second bucket consists of the amount of loans sold with contractual recourse obligations of less than six percent and is risk-weighted according to the weighted average recourse percent of its contents, as computed by the credit union.[5] § 702.107(d)(2); *see* new Table 5(a) and new Appendixes F and G in rule text below. Like the existing ''alternative components,'' if the ''alternative component'' proposed for loans sold with recourse reduces the RBNW requirement initially determined under the ''standard calculation,'' the credit union could then substitute it for the corresponding ''standard component.'' § 702.106(f).

4. Section 702.108—Risk Mitigation Credit

a. *Who may apply.* Section 702.108(a) presently permits a credit union that fails an applicable RBNW requirement to apply for a ''risk mitigation credit'' (''RMC'') that, if granted, will reduce the RBNW requirement it must meet.[6] But NCUA will not consider an application for this relief until *after* the effective date that a credit union fails under both the ''standard calculation'' and the ''alternative components.'' *Submission Guidelines* § I.3. In practice, this ''fail first'' prerequisite forces a failing credit union to remain classified ''undercapitalized'' while its RMC application is pending. *Id.* §§ I.4, I.8. This is true even when a credit union reasonably anticipates failing an RBNW requirement because, in a preceding quarter, it either failed or barely passed.

To spare credit unions that are genuinely in danger of failing an RBNW requirement from this ''fail first'' prerequisite, the NCUA Board proposes to allow them to apply for an RMC preemptively—that is, to apply in advance of the quarter-end so that the credit union receives any RMC for which it qualifies *before* the approaching effective date when it would fail its RBNW requirement. To that end, the proposed rule revises § 702.108 to allow a credit union to apply for an RMC at any time before the next quarter-end effective date if on any of the current or three preceding effective dates of classification it has either failed an applicable RBNW requirement, or met it by less than 100

[2] A corrected net worth ratio that reduces a credit union to a lower worth category typically has the greatest impact when a ''well capitalized'' or ''adequately capitalized'' credit union declines to ''undercapitalzied'' or lower (and must submit an NWRP for the first time) and when a credit union declines to ''critically undercapitalized'' from a higher net worth category (and becomes subject to mandatory liquidation of net worth fails to improve). In comparison, when an already ''undercapitalized'' credit union declines to ''significantly undercapitalized,'' the MSAs are the same in both categories and only the range of availabale DSAs expands.

[3] Currently, the RBNW requirement can be reduced to reflect *partial* recourse only when a credit union that initially fails its RBNW requirement applies for and receives a ''risk mitigatin credit'' based upon proof of mitigation of credit risk. § 702.108(a)(1); 65 FR at 44963.

[4] For example, documentation for the loan sale transaction may provide for recourse in the form of a contractually-spaced recourse obligation measured either by a designated dollar amount that is fixed for the life of the loan, or by a designated percentage of the unpaid balance of a pool of loans.

[5] To calculate the ''weighted average recourse percent'' of the bucket of loans sold with recourse <6%, multiply each percentage of contractual recourse obligation by the corresponding balance of loans sold with that recourse to derive the dollar weighted percent. Divide the total dollar weighted percent by the total dollar balance of loans with <6% recourse to derive the alternative risk weighting. *See* Appendix G in rule text below.

[6] To aid credit unions seeking a ''Risk Mitigation Credit,'' NCUA has released two publications: *Guidelines for Submission of an Application for PCA ''Risk Mitigation Credit''* (NCUA form 8507) (''*Submission Guidelines*'') and *Guidelines for Evaluation of an Application for PCA* ''Risk Mitigation Credit'' (NCUA form 8508).

basis points. The *Submission Guidelines* would be modified accordingly.

A credit union that has met its RBNW requirement by more than 100 basis points in each of the preceding four quarters would not be able to apply for an RMC until it subsequently fails its RBNW requirement or meets it by less than 100 basis points. The proposed revision will enable credit unions that are genuinely at risk of failing an RBNW requirement to preemptively qualify for and timely receive an RMC that may permit them to seamlessly maintain their initial classification as either ''adequately capitalized'' or ''well capitalized.''

b. *Recognizing ''call'' feature of loans.* The RBNW calculation features both a ''standard component'' and an ''alternative component'' for long-term real estate loans and for member business loans outstanding. §§ 702.106(a)–(b), 702.107(a)–(b). The longer the maturity of the loan, the greater the interest rate risk and credit risk exposure, justifying a commensurately higher risk-weighting. *See* 65 FR at 44960–44961. The components for both types of loans schedule them by contractual maturity date regardless whether a loan has a call feature permitting the lender to redeem it before the maturity date. A few credit unions contend that permitting them to schedule such ''callable'' loans by call date, rather than by maturity date, may reduce their RBNW requirement.

The NCUA Board declines for the following reasons to schedule ''callable'' loans by call date for purposes of calculating the RBNW requirement. First, the call feature is not a contractual requirement, but rather an option that credit unions may be reluctant to exercise in periods of rising interest rates, when members may lack the capacity to repay or refinance loans at a higher rate. Second, allowing reliance on the call date would be an incentive for credit unions to include a call feature in their loans solely to reduce the RBNW requirement, and with no good faith intention of exercising the option. Third, allowing reliance on the call date would be an incentive to use a call feature as a pretext for refinancing a loan on substantially the same terms except with a later maturity, to circumvent statutory maturity limits. 12 U.S.C. 1757(5).

Without modifying the present RBNW components, however, an RMC is perfectly suited to recognize mitigation of risk when, in practice, a call feature truly reduces a loan's maturity or resets its interest rate. When a credit union's RMC application demonstrates a program and history of efficiently exercising call options on its loans, NCUA staff will evaluate the interplay between credit risk and interest rate risk—something that the simple structure of the ''standard calculation'' and the ''alternative components'' is not well suited to address. An RMC reflecting the true risk mitigation impact of a call feature may be granted to offset a credit union's RBNW requirement as calculated in the absence of an RMC.

5. Section 702.201—PCA for ''Adequately Capitalized'' Credit Unions

a. *Earnings retention.* CUMAA requires credit unions having a net worth ratio of less than 7 percent to ''annually set aside as net worth an amount equal to not less than 0.4 percent of its total assets.'' 12 U.S.C. 1790d(e)(1). To implement this statutory ''earnings retention requirement,'' credit unions classified ''adequately capitalized'' or lower are generally required to increase their net worth quarterly by an amount *equivalent* to 0.1 percent of total assets and to transfer that amount to the regular reserve account until the credit union becomes ''well capitalized.'' § 702.201(a).

In practice, some credit unions have not understood that it is the dollar amount of net worth that they must increase by the equivalent of 0.1 percent of assets per quarter, not the net worth ratio itself. Changes in the dollar amount of net worth will not match changes in the net worth ratio unless net worth and total assets were to increase or decrease by exactly the same percentage. Other credit unions are making earnings transfers to the regular reserve in the absence of increases in net worth. Still others have pointed out that, as presently written, § 702.201 prevents them from meeting the statutory annual minimum of 0.4 percent of total assets on an average basis over four quarters. Instead, it requires that the *equivalent* of 0.1 percent of assets be set aside in each and every quarter of the year, regardless whether the credit union has set aside more than the quarterly minimum in prior quarters. To clarify how the earnings retention requirement operates, the proposed rule revises subsection (a) in two ways. First, it indicates that it is the ''the dollar amount'' of net worth that must be increased, and permits the minimum increase to be made ''either in the current quarter, or on average over the current and three preceding quarters.''

b. *Decrease in retention.* As CUMAA directs, NCUA may, on a case-by-case basis, permit a credit union to increase net worth by an amount that is less than the quarterly minimum (0.1 percent of assets) when necessary to avoid a significant redemption of shares and to further the purpose of PCA. 12 U.S.C. 1790d(e)(2); § 702.201(b). In some cases, credit unions have decreased their quarterly earnings retention, in violation of the earnings retention requirement, in order to pay dividends as they deem necessary, either without seeking NCUA's permission at all or prior to seeking NCUA's permission. Once earnings that should have been retained to build net worth have been paid out in dividends, they cannot be recovered. The proposed rule addresses this problem by revising subsection (b) to provide that NCUA will consider requests to decrease earnings retention only if they are submitted in writing no later than 14 days before the quarter end. NCUA will be under no obligation to grant applications submitted after the 14-day deadline or after the quarter-end. Furthermore, NCUA is entitled to take supervisory or other enforcement action against credit unions that either decrease their earnings retention without permission, or persist in failing to timely apply for permission.

c. *Decrease by FISCU.* NCUA is generally required to consult with the appropriate State official on PCA decisions affecting State-chartered credit unions. 12 U.S.C. 1790d(l). The requirement to ''consult and seek to work cooperatively'' with State officials when deciding whether a State-chartered credit union may decrease its earnings retention was previously located in § 702.205(c), where it was misidentified as a DSA. The proposed rule inserts the ''consult and work cooperatively'' requirement into a new subsection (c) of § 702.201.

d. *Periodic review.* CUMAA requires the NCUA Board to ''periodically review'' any decision permitting a decrease in earnings retention. 12 U.S.C. 1790d(e)(2)(B). Section 702.201, which implements that requirement, states that such decisions are ''subject to review and revocation no less frequently than quarterly.'' § 702.201(b). The ''no less frequently than quarterly'' timetable is flawed because it simply is too vague to indicate when a decision permitting a decrease must be reviewed. Since part 702 operates almost completely on a quarterly timetable (coinciding with the quarterly Call Reporting schedule), proposed new subsection (d) specifies that ''a decision . . . to permit a credit union to decrease its earnings retention is subject to quarterly review and revocation.''

For ''adequately capitalized'' credit unions (for whom earnings retention is the only MSA), quarterly review will be implicit because their requests to

decrease earnings retention are decided on a quarter-by-quarter basis. However, for credit unions classified ''undercapitalized'' or lower, it is difficult to reconcile periodic review with CUMAA's and part 702's reliance on net worth restoration plans (''NWRPs''). To be approved, an NWRP must prescribe ''a quarterly timetable of steps the credit union will take to increase its net worth ratio.'' § 702.206(c)(1)(i). It also must project the amount of earnings retention, decreased as permitted by NCUA, for each quarter of the term of the NWRP. § 702.206(c)(1)(ii). Typically, approved plans permit decreases in earnings retention extending for successive quarters over the term of the plan.

Independently of the review requirement in § 702.201, these decreases in earnings retention are effectively subject to quarterly review and revocation as a function of the NWRP. A credit union that falls to a lower net worth category because it failed to implement the steps or to meet the quarterly net worth targets in its NWRP may be required to file a new NWRP, § 702.206(a)(3), thereby revoking the then-current NWRP approving future decreases in earnings retention. *See also* 12 CFR 747.2005(b)(3) (civil money penalty for failure to implement NWRP). In contrast, when a credit union *is* implementing the prescribed steps and meeting its net worth targets, there would be no reason to discontinue the decreased earnings retention approved in its NWRP. Because quarterly review is effectively built-in to the NWRP component of PCA, § 702.201's quarterly review requirement is redundant when applied to credit unions operating under an NWRP. For that reason, the proposed rule exempts such credit unions from the quarterly review that § 702.201 imposes on ''adequately capitalized'' credit unions.

6. Section 702.204—PCA for ''Critically Undercapitalized'' Credit Unions.

a. ''*Other corrective action*''. When a credit union becomes ''critically undercapitalized'' (net worth ratio <2%), part 702 gives the NCUA Board 90 days in which to either place the credit union into conservatorship, liquidate it, or impose ''other corrective action * * * to better achieve the purpose of [PCA].'' 12 U.S.C. 1790d(i)(1); § 702.204(c)(1). NCUA so far has interpreted the option to impose ''other corrective action'' (''OCA'') as requiring some further action in addition to complying with the steps prescribed in an approved NWRP for meeting quarterly net worth targets. Some further action would seem appropriate when a credit union either is not complying with its approved NWRP, or is implementing the prescribed action steps but still failing to achieve its quarterly net worth targets. In contrast, demanding further action is superfluous, if not punitive, when a credit union is both implementing the steps in its NWRP and timely achieving its net worth targets. NCUA has found it difficult to fashion OCA that is more than a makeweight in these situations.

Congress left it entirely to the NCUA Board to ''take such other action'' in lieu of conservatorship and liquidation ''as the Board determines would better achieve the purpose of [PCA], after documenting why the action would better achieve that purpose.'' 12 U.S.C. 1790d(i)(1)(b). See *also* S. Rep. at 15. The NCUA Board has determined that the purpose of PCA—building net worth to minimize share insurance losses—is not compromised by declining to impose OCA when it is documented that a credit union already is achieving the purpose of PCA by complying with an approved NWRP and achieving its prescribed net worth targets. In other words, there is no reason to demand more than complete success from a credit union that, so far, is completely successful in building net worth.

To implement a more flexible approach to imposing OCA in lieu of conservatorship and liquidation, the proposed rule provides that ''[OCA] may consist, in whole or in part, of complying with the timetable of quarterly steps and meeting quarterly net worth targets prescribed in an approved [NWRP].'' § 702.204(c)(1)(iii). This permits, but does not require, NCUA to limit OCA to directing a credit union that already is in compliance with its approved NWRP to simply continue to comply, without undertaking any further action beyond what the NWRP already requires.

b. *10-day appeal period.* The NCUA Board's authority to decide whether to conserve a ''critically undercapitalized'' credit union, liquidate it, or allow OCA may be delegated only in the case of credit unions having assets of less than $5 million. 12 U.S.C. 1790d(i)(4); § 702.204(c)(4). In such cases, the credit union has a statutory ''right of direct appeal to the NCUA Board of any decision made by delegated authority.'' *Id.* However, neither the FCUA nor part 747 sets a deadline by which a credit union must appeal a delegated decision to the NCUA Board.

The NCUA Board has in fact delegated to its Regional Directors the authority to impose and renew OCA for credit unions having assets of less than $5 million. *See* Delegation of Authority SUP–32. However, the lack of a deadline for exercising the right to appeal delegated decisions to the NCUA Board gives ''critically undercapitalized'' credit unions at least the appearance of an unlimited opportunity to challenge a Regional Director's decision. The Act itself generally limits credit unions to a 10-day window in which to seek judicial review of any NCUA Board decision to conserve or liquidate. 12 U.S.C. 1786(h)(3), 1787(a)(1)(B). To impose reasonable finality upon the unfolding timetable of decisions the Act requires when a credit union becomes ''critically undercapitalized,'' the proposed rule likewise sets a deadline of ten calendar days in which to appeal a delegated decision to the NCUA Board.

c. *Insolvent FCU.* The NCUA Board generally must liquidate a credit union eventually if it remains ''critically undercapitalized.'' § 702.204(c). Independently of PCA, however, the Act directs that ''[u]pon its finding that a Federal credit union . . . is insolvent, the Board shall close such credit union for liquidation.'' 12 U.S.C. 1787(a)(1)(A). Therefore, in the case of a ''critically undercapitalized'' *federal* credit union that is insolvent (*i.e.,* has a net worth ratio of less than zero), NCUA has two separate statutory liquidation optionsa PCA—based liquidation, as described in the preceding section, or an insolvency-based liquidation. To clarify that insolvency-based liquidation is an option, the proposed rule adds a new subsection (d) to § 702.204 clarifying that ''a 'critically undercapitalized' federal credit union that has a net worth ratio of less than zero percent (0%) may be placed into liquidation on grounds of insolvency pursuant to [§ 1787(a)(1)(A)].''

7. Section 702.205—Consultation with State Officials on Proposed PCA

NCUA is generally required to consult with the appropriate State official before imposing a PCA remedy on a State-chartered credit union. 12 U.S.C. 1790d(l). Subsection (c) of § 702.205 requires NCUA to ''consult and seek to work cooperatively with the appropriate State official'' before imposing a DSA upon a State-chartered credit union classified ''undercapitalized'' or lower. However, this provision misidentifies as a DSA the decision whether to permit a decrease in the quarterly earnings retention. § 702.201(b). The proposed rule deletes this erroneous reference to § 702.201(b) and inserts in § 702.201 the requirement for NCUA to consult the appropriate State official before decreasing a State-chartered credit union's earnings retention.

8. Section 702.206—Net Worth Restoration Plans

a. *Contents of NWRP.* Section 702.206 prescribes the contents of an NWRP that must be submitted for approval by credit unions classified ''undercapitalized'' or lower. Among the items an NWRP must address is how the credit union will comply with MSAs and DSAs. § 702.206(c)(1)(iii). As presently drafted, § 702.206(c)(1)(iii) has been misinterpreted as a demand to either consent to, or prospectively explain how the credit union *would* comply with, DSAs in the event the NCUA Board were to impose any. The proposed rule revises this section to clarify that an NWRP need only address whatever DSAs, if any, the NCUA Board *already* has imposed on the credit union.

b. *Publication of NWRP.* Publication of an NWRP is not a prerequisite to enforcing its provisions as authorized in 12 CFR 747.2005, but this fact is not expressly stated in § 702.206 itself. The omission has led to the misimpression that an NWRP, like a ''Letter of Understanding and Agreement,'' must be published in order to subsequently be enforceable. The Act mandates that a ''written agreement or other written statement'' must be published in order for a violation to be enforceable ''unless the Board, in its discretion, determines that publication would be contrary to the public interest.'' 12 U.S.C. 1786(s)(1)(A). To the extent an NWRP qualifies as a ''written agreement or other written statement'' under § 1786(s)(1)(A), the NCUA Board does not intend to publish NWRPs because it believes that publication would expose the credit union to reputation risk that would be contrary to the public interest. Therefore, the proposed rule adds new subsection (i) to § 702.206, clarifying that ''An NWRP need not be published to be enforceable because publication would be contrary to the public interest.''

c. ''*Safe harbor*'' *approval of NWRP.* To assist credit unions that fall marginally below ''adequately capitalized'' primarily because asset growth outstrips income growth, the NCUA Board is seeking comment on the concept of ''safe harbor'' approval of an NWRP—that is, notice of certain criteria established by regulation that, when met, will ensure approval. Only credit unions above a certain minimum net worth ratio (*i.e.,* maximum number of basis points short of being ''adequately capitalized'') would be eligible. Under the concept of ''safe harbor'' approval, an eligible credit union would agree in its NWRP to achieve a minimum quarterly return on assets (''ROA'')—to be set by regulation according to the number of basis points needed to attain a 6 percent net worth ratio—that would offset abundant asset growth sufficiently to improve its net worth ratio quarterly over the term of the plan. The NWRP must specify the means by which the credit union plans to achieve the minimum quarterly ROA while controlling exposure to interest rate risk and credit risk. As CUMAA requires, NCUA would evaluate those plans to determine whether they are ''based on realistic assumptions and [are] likely to succeed in restoring the net worth of the credit union.'' 12 U.S.C. 1790d(f)(5). An NWRP determined by NCUA to satisfy this criterion would be assured of approval.[7] That approval would be revoked automatically if and when the credit union failed either to achieve its quarterly minimum ROA or to improve its net worth ratio, as pledged in the NWRP. Public comment will help the NCUA Board decide whether to pursue the concept of ''safe harbor'' approval of an NWRP for credit unions that become marginally ''undercapitalized'' primarily due to asset growth.

9. Section 702.303—PCA for ''*Adequately Capitalized*'' *New Credit Unions*

Under the alternative system of PCA for new credit unions, a credit union that manages to become ''adequately capitalized'' while still new must comply with the same minimum earnings retention that applies to non-new credit unions that are ''adequately capitalized.''[8] § 702.201(a). In contrast, ''new'' credit unions that stay classified below ''adequately capitalized'' are not subject to minimum earnings retention; they must quarterly increase net worth only ''by an amount reflected in the credit union's approved initial or revised business plan.'' § 702.304(a)(1). This creates a disincentive for ''new'' credit unions to become ''adequately capitalized'' because the reward for maintaining a net worth ratio below 6 percent is that they are relieved from complying with a minimum earnings retention amount.

To eliminate the disincentive, the proposed rule revises § 702.303 to put all ''new'' credit unions having a net worth lower than 7 percent in parity for purposes of earnings retention. An ''adequately capitalized'' new credit union would no longer be subject to minimum earnings retention as non-new credit unions. Instead, like new credit unions in lower categories, it would be required to increase net worth quarterly by ''an amount reflected in its approved initial or revised business plan'' until it becomes ''well capitalized.'' In the absence of such a plan, however, the credit union would remain subject to the same quarterly minimum earnings retention as non-''new'' credit unions.

10. Section 702.304—PCA for ''*Moderately Capitalized,*'' ''*Marginally Capitalized*'' *and* ''*Minimally Capitalized*'' *New Credit Unions*

As explained above, § 702.201(a) was modified to specify that earnings retention must increase ''the dollar amount'' of net worth, not simply the net worth ratio itself. To conform to that modification, the proposed rule revises § 702.304(a)(1) accordingly.

11. Section 702.305—PCA for ''*Uncapitalized*'' *New Credit Unions*

a. *Member business loan restriction.* An ''uncapitalized'' new credit union presently enjoys full relief from all MSAs while it is operating within the period allowed by its initial business plan to have no net worth. An unintended consequence of this forbearance is that ''uncapitalized'' credit unions are free of the MSA restricting member business loans (''MBLs''); the restriction is triggered only when a credit union manages to attain some net worth and rise to the ''minimally capitalized'' net worth category.[9] Yet a ''minimally capitalized'' credit union arguably is better suited to expand its MBL portfolio than one that remains ''uncapitalized.'' Moreover, making PCA *more* demanding as a credit union's net worth and category classification improve, rather than relaxing it, is contrary to the purpose of PCA. To rectify this unintended consequence, the proposed rule treats all ''uncapitalized'' new credit unions equally, so that the MBL restriction applies regardless whether a new credit union is operating with no net worth as

[7] ''Safe harbor'' approval would not exempt a credit union from the statutory requirement to comply with the three other MSAs—earnings retention, the freeze on assets, and the freeze on MBLs, 12 U.S.C. 1790d(e) and (g)—nor from any otherwise applicable DSAs. *E.g.,* § 702.202(c). The asset freeze would end only when the NWRP is approved. 12 U.S.C. 1790d(g)(1)(A).

[8] The proposed rule corrects the wording of current § 702.303, which inadvertently applied that section to ''new'' credit unions classified lower than ''adequately capitalized.'' In fact, §§ 702.304 and 702.305 prescribe PCA for new credit unions classified lower than ''adequately capitalized''.

[9] The earnings retention requirement, § 702.305(a)(1), is ineffective against an ''uncapitalized'' credit union because a credit union that has an undivided earnings deficit has no net worth to retain.

permitted by its initial business plan or has declined to ''uncapitalized'' from a higher net worth category.

b. *Filing of revised business plan.* Subsection (a)(2) generally requires an ''uncapitalized'' new credit union to submit a revised business plan (''RBP'') within 90 days following either of two events—expiration of the period that the credit union's initial business plan allows it to operate with no net worth, or the effective date that it declined to ''uncapitalized'' from a higher net worth category. This contrasts with the 30-day period that ''moderately capitalized,'' ''marginally capitalized'' and ''minimally capitalized'' credit unions are given to file an RBP. § 702.306(a)(1). Ninety days is, in and of itself, an unduly long filing period given that an ''uncapitalized'' credit union faces mandatory conservatorship or liquidation if it fails to generate some net worth. Furthermore, it is counterintuitive to give a credit union that has a net worth deficit three times as long to devise a plan for generating positive earnings than is given to credit unions that already have net worth.

The proposed rule puts all new credit unions that must file an RBP in parity. First, it deletes the 90-day filing window for ''uncapitalized'' credit unions, thereby limiting them to the general 30-day window, once they are required to file an RBP. Second, it reorganizes § 702.305(a)(2) to parallel the conditions that trigger other less than ''adequately capitalized'' new credit unions to revise their business plans, § 702.304(a)(2), even though only ''uncapitalized'' credit unions are initially allowed to operate with no net worth. To that end, the proposed rule requires an ''uncapitalized'' credit union to submit an RBP if it either: fails to increase net worth (*i.e.,* reduce its earnings deficit) as its existing business plan provides; has no approved business plan; or has violated the MSA restricting MBLs.

c. *Liquidation or conservatorship if ''uncapitalized'' after 120 days.* Section 702.305(c)(2) generally requires the NCUA Board to conserve or liquidate an ''uncapitalized'' new credit union that remains ''uncapitalized'' 90 days after its RBP is approved. It is silent, however, regarding conservatorship or liquidation of a credit union whose RBP is rejected. To correct this oversight, the proposed rule mandates conservatorship or liquidation of an ''uncapitalized'' new credit union after a 120-day period regardless whether an RBP has been approved or rejected. This period combines the 30-day window for submitting an RBP, § 702.306(a)(1), and the original 90-day period allowed for the credit union to avoid conservatorship and liquidation by developing positive earnings. The 120-day period runs from the later of either the effective date of classification as ''uncapitalized'' or, if a credit union is operating with no net worth in the period prescribed by its initial business plan, the last day of the calendar month after expiration of that period. Because the period for operating with no net worth typically runs on a quarterly basis, the last day of the calendar month after it expires parallels the calendar month that separates the quarter-end and the effective date of classification as ''undercapitalized.'' Finally, a new subsection (c)(3) is added to preserve the exception to mandatory conservatorship or liquidation for a credit union that is able to demonstrate that it is viable and has a reasonable prospect of becoming ''adequately capitalized.''

d. *''Uncapitalized'' new FCU.* As explained above in reference to the new subsection (d) proposed for § 702.204, there are two options for liquidating a federal credit union that has no net worth—a PCA-based liquidation, 12 U.S.C. 1787(a)(3)(A)(ii), or an insolvency-based liquidation. 12 U.S.C. 1787(a)(1)(A). Both are available when a new federal credit union either fails to timely submit an RBP, § 702.305(c)(1), or remains ''uncapitalized'' 120 days after the effective date of classification, § 702.305(c)(2). The proposed rule adds a new subsection (d) to § 702.305 to clarify that ''an 'uncapitalized' federal credit union may be placed into liquidation on grounds of insolvency pursuant to [§ 1787(a)(1)(A)].''

12. Section 702.306—Revised Business Plans for New Credit Unions

a. *Filing schedule.* Section 702.306(a)(1) presently requires ''moderately capitalized,'' ''marginally capitalized'' and ''minimally capitalized'' credit unions to file an RBP within 30 days after failing to meet a quarterly net worth target prescribed in an existing business plan. As discussed above, the proposed rule eliminates the 90-day filing window for ''uncapitalized'' credit unions. § 702.305(a)(2). To conform to that modification, this section is revised to apply the 30-day filing window uniformly to all new credit unions classified less than ''adequately capitalized'' or that have violated the MSA restricting MBLs. §§ 702.304(a)(3), 702.305(a)(3).

The current rule's 30-day filing period runs from ''the effective date (per § 702.101(b)) of the credit union's failure to meet a quarterly net worth target prescribed in its then-present business plan.'' § 702.306(a)(1). However, § 702.101(b) addresses the effective date of classification among the net worth categories; it says nothing to determine when a quarterly net worth target is met. The subtlety of this distinction may confuse credit unions that have no then-present approved business plan or have violated the MSA restricting MBLs. Therefore, the proposed rule revises subsection (a)(1) to effectively give new credit unions that fail to meet a quarterly target 60 days following the quarter-end to file an RBP. § 702.306(a)(1)(i). The 60-day period combines the calendar month that separates the quarter-end from the effective date of classification, with the uniform 30-day filing period that commences on the effective date. The proposed rule further clarifies that, for new credit unions that either have no approved business plan or that have violated the MBL restriction, the effective date of classification as less than ''adequately capitalized'' triggers the 30-day window for filing an RBP. § 702.306(a)(1)(ii)–(iii).

b. *Timetable of net worth targets.* Section 702.306(b)(2) prescribes the contents of an RBP, which must include a timetable of quarterly net worth targets extending for the term of the plan ''so that the credit union becomes 'adequately capitalized' and remains so for four consecutive quarters.'' It also warns that a ''complex'' new credit union that is subject to an RBNW requirement may need to attain a net worth ratio higher than 6 percent to become ''adequately capitalized.'' The proposed rule rectifies two flaws in this section. First, in contrast to an NWRP, the objective of an RBP is to build net worth so that a new credit union becomes ''adequately capitalized'' by the time it no longer is ''new,'' not by the end of the term of the plan. 65 FR at 8578; 64 FR 27090, 27099 (May 18, 1999) (chart). A credit union remains ''new'' as long as it is in operation less than 10 years or has assets of $10 million or less. § 702.301(b). The proposed rule revises subsection (b)(2) so that an RBP's net worth targets ensure the new credit union will become ''adequately capitalized'' by the time it no longer qualifies as ''new.'' Second, under part 702 new credit unions cannot be ''complex'' nor subject to an RBNW requirement because, by definition, they do not meet the $10 million asset minimum, § 702.103(a)(1). Therefore, the proposed rule deletes the warning to new credit unions that are ''complex.''

c. *Publication of RBP.* As explained above in proposing to add a new

subsection (i) to § 702.206, publication of an NWRP is not a prerequisite to enforcing its provisions as authorized in 12 CFR 747.2005. The same is true of an RBP, but this fact was similarly omitted from § 702.306. To the extent an RBP qualifies as a ''written agreement or other written statement'' under § 1786(s)(1)(A), the NCUA Board does not intend to publish RBPs because it believes that publication would expose the credit union to reputation risk that would be contrary to the public interest. Therefore, the proposed rule adds new subsection (h) to § 702.306, clarifying that ''An RBP need not be published to be enforceable because publication would be contrary to the public interest.''

13. Section 702.401—Charges to Regular Reserve

The board of directors of a federally-insured credit union that has depleted the balance of its undivided earnings and other reserves may authorize losses to be charged to the regular reserve account without regulatory approval so long as the charges do not reduce the credit union's net worth classification below ''well capitalized'' (*i.e.,* net worth ratio of 7 percent or greater). § 702.401(c)(1). That net worth category was established as the minimum for charging losses without regulatory approval because the categories below ''well capitalized'' trigger MSAs. The proposed rule lowers the minimum category to ''adequately capitalized'' (*e.g.,* 6 percent net worth ratio), giving credit unions the flexibility to decide whether charging losses is worth triggering the single MSA that applies to that category—the quarterly earnings retention. § 702.201(a). In addition, the proposed rule expressly reminds credit unions that they must deplete their undivided earnings balance before making any charge to the regular reserve.

Subsection (c)(2) presently requires the prior approval of the ''appropriate State official,'' but not the approval of the ''appropriate Regional Director,'' when a State-chartered credit union seeks to charge losses that would cause it to decline below the minimum category. Omitting the approval of NCUA Regional Directors is inconsistent with the protocol applied elsewhere in part 702 requiring joint State and Federal approval of PCA decisions affecting State-chartered credit unions, *e.g.,* §§ 702.206(a)(1), 702.306(a)(1). To correct this inconsistency, the proposed rule modifies § 702.401(c)(2) to require the concurrence of both the ''appropriate State official'' *and* ''the appropriate Regional Director'' for a State-chartered credit union to charge losses to the regular reserve. In addition, the proposed rule clarifies that written approval may consist of an approved NWRP that allows such charges.

14. Section 702.403—Payment of Dividends

Section 702.403 presently allows the board of directors of a federally-insured credit union that has depleted the balance of undivided earnings to pay dividends out of the regular reserve account without regulatory approval so long as it does not cause the credit union to decline below ''well capitalized.'' § 702.403(b)(1). As explained in the preceding section regarding approval to charge losses to the regular reserve under § 702.401, the proposed rule lowers to ''adequately capitalized'' the minimum net worth category in which credit unions may pay dividends out of the regular reserve without regulatory approval. This will give credit unions that have depleted undivided earnings the flexibility to decide whether drawing down the regular reserve to pay dividends is worth triggering the quarterly earnings retention requirement that applies to ''adequately capitalized'' credit unions. § 702.201(a).

Like § 702.401(c)(2), subsection (b)(2) presently requires the prior approval of the ''appropriate State official,'' but not the approval of the ''appropriate Regional Director,'' when paying dividends out of the regular reserve would cause a State-chartered credit union to decline below the minimum net worth category. In addition, omitting Regional Director approval may suggest, incorrectly, that a State official's approval to pay dividends from the regular reserve under § 702.401(b) overrides the need to independently obtain both the State official's and the Regional Director's approval under § 702.201(b) for a State-chartered credit union to decrease its earnings retention in order to pay dividends. For this reason and the reason explained in the preceding section, the proposed rule corrects this omission by revising subsection (b)(2) to require the concurrence of both the ''appropriate State official'' *and* ''the appropriate Regional Director'' for a State-chartered credit union to pay dividends out of its regular reserve. Finally, the proposed rule clarifies that written approval may consist of an approved NWRP that allows such dividend payments.

Subpart A of Part 741—Requirements for Insurance

15. Section 741.3—Adequacy of Reserves

Part 741 presently allows State-chartered credit unions to charge losses other than loan losses to the regular reserve in accordance with State law or procedures, but without regulatory approval, provided that the charges do not cause the credit union to decline below ''well capitalized.'' 12 CFR 741.3(a)(2). The subsection that precedes it already incorporates by reference all of part 702 as a prerequisite for insurability of State-chartered credit unions. As discussed above, § 702.401(c) already imposes on State-chartered credit unions the same conditions for regulatory approval that § 741.3(a)(2) prescribes for an insured credit union seeking to charge losses to the regular reserve. For this reason, § 741.3(a)(2) is redundant and the proposed rule eliminates it.

The absence of § 741.3(a)(2) does not mean that § 702.401(c) would preempt ''either state law or procedures established by the appropriate State official'' that restrict a State-chartered credit union's ability to charge losses to the regular reserve. On the contrary, such charges would independently remain subject to applicable State laws and procedures. Moreover, an appropriate State official would retain complete discretion to withhold approval, under § 702.401(c)(2), of such charges on grounds that they would violate State law or procedures.

Subpart L of Part 747—Issuance, Review and Enforcement of Orders Imposing PCA

16. Section 747.2005—Enforcement of Orders

The NCUA Board is authorized to ''assess a civil money penalty against a credit union which fails to implement a net worth restoration plan * * * or a revised business plan under * * * part 702.'' 12 CFR 747.2005(b)(2). Publication of either type of plan is not a prerequisite to seeking a civil money penalty against an offending credit union, but this fact is not expressly stated in § 747.2005. The NCUA Board has determined that it is not in the public interest to require publication of an NWRP or an RBP in order for either to be enforceable and, as explained above, proposes to modify §§ 702.206 and 702.306 accordingly. To conform to those modifications, the proposed rule revises § 747.2005(b)(2) to provide that a civil money penalty may be assessed for failure to implement a plan

''regardless whether the plan was published.''

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis describing any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed rule improves and simplifies the existing system of PCA mandated by Congress. 12 U.S.C. 1790d. The NCUA Board has determined and certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Thus, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. Control number 3133–0161 has been issued for part 702 and will be displayed in the table at 12 CFR part 795.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on State and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily adheres to the fundamental federalism principles addressed by the executive order. This proposed rule will apply to all federally-insured credit unions, including State-chartered credit unions. Accordingly, it may have a 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. This impact is an unavoidable consequence of carrying out the statutory mandate to adopt a system of prompt corrective action to apply to all federally-insured credit unions. NCUA staff has consulted with a committee of representative State regulators regarding the impact of the proposed revisions on State-chartered credit unions. Their comments and suggestions are reflected in the proposed rule.

Treasury and General Government Appropriations Act, 1999

NCUA has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. A purpose of the proposed rule is to improve and simplify the existing system of PCA. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects

12 CFR Parts 702 and 741

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 747

Administrative practices and procedures, Credit unions.

By the National Credit Union Administration Board on May 16, 2002.

Becky Baker,

Secretary of the Board.

For the reasons set forth above, 12 CFR parts 702, 741 and 747 are proposed to be amended as follows:

PART 702—PROMPT CORRECTIVE ACTION

1. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

2. Amend § 702.2 as follows:

a. Redesignate current paragraphs (i) through (k) as new paragraphs (k) through (m) respectively, and redesignate current paragraphs (e) through (h) as new paragraphs (f) through (i) respectively.

b. Add new paragraphs (e) and (j) to read as set forth below;

c. Revise newly designated paragraph (l)(1)(i) to read as set forth below; and

d. Revise newly designated paragraph (l)(1)(iv) to read as set forth below.

§ 702.2 Definitions.

* * * * *

(e) *Dividend* means a dividend paid by a federal credit union and interest paid by a State-chartered credit union.

* * * * *

(j) *Senior executive officer* means a senior executive officer as defined by 12 CFR 701.14(b)(2).

* * * * *

(l) *Total assets.* (1) * * *

(i) *Average quarterly balance.* The average of quarter-end balances of the current and three preceding calendar quarters; or

* * * * *

(iv) *Quarter-end balance.* The quarter-end balance of the calendar quarter as reported on the credit union's Call Report.

* * * * *

3. Amend § 702.101 as follows:

a. Add a heading to paragraph (b)(1) to read as set forth below;

b. Revise paragraph (b)(2) to read as set forth below;

c. Add a heading to paragraph (b)(3) to read as set forth below; and

d. Revise the heading of paragraph (c), and paragraph (c)(1), to read as follows:

§ 702.101 Measures and effective date of net worth classification.

* * * * *

(b) * * *

(1) *Quarter-end effective date.* * * *

(2) *Corrected net worth category.* The date the credit union received subsequent written notice from NCUA or, if State-chartered, from the appropriate State official, of a decline in net worth category due to correction of an error or misstatement in the credit union's most recent Call Report; or

(3) *Reclassification to lower category.* * * *

(c) *Notice to NCUA by filing Call Report.* (1) Other than by filing a Call Report, a federally-insured credit union need not notify the NCUA Board of a change in its net worth ratio that places the credit union in a lower net worth category;

* * * * *

4. Amend § 702.102 by revising Table 1 immediately preceding paragraph (b) to read as follows:

§ 702.102 Statutory net worth categories.

* * * * *

TABLE 1.—STATUTORY NET WORTH CATEGORY CLASSIFICATION

A credit union's net worth category is—	If its net worth ratio is—	And subject to the following condition(s)—
Well Capitalized''	7% or above	Meets applicable risk-based net worth (RBNW) requirement.
Adequately Capitalized''	6% to 6.99%	Meets applicable RBNW requirement.

TABLE 1.—STATUTORY NET WORTH CATEGORY CLASSIFICATION—Continued

A credit union's net worth category is—	If its net worth ratio is—	And subject to the following condition(s)—
Undercapitalized''	4% to 5.99%	Or fails applicable RBNW requirement.
Significantly Undercapitalized''	2% to 3.99%	Or if ''undercapitalized'' at <5% net worth ratio and fails to timely submit or materially implement Net Worth Restoration Plan.
Critically Undercapitalized''	Less than 2% ...	None.

* * * * *

5. Amend § 702.103 as follows:

a. Remove the heading from paragraph (a);

b. Remove paragraph (b);

c. Redesignate current paragraph (a) introductory text as the sectional introductory text, and paragraphs (a)(1) and (a)(2) as (a) and (b), respectively.

6. Amend § 702.104 as follows:

a. Remove the number ''1'' from the parenthetical ''(Table 1)'' in the introductory text and add in its place the number ''2''; and

d. Redesignate Table 1 immediately following paragraph (h) as Table 2.

7. Amend § 702.105 as follows:

e. Remove the number ''2'' from the parenthetical ''(Table 2)'' in the introductory text and add in its place the number ''3'';

f. Remove the citation ''§ 702.2(k)'' in the introductory text and add in its place the citation ''§ 702.2(m)''; and

g. Redesignate Table 2 immediately following paragraph (h) as Table 3.

8. Amend § 702.106 as follows:

a. Remove the number ''3'' from the parenthetical ''(Table 3)'' in the introductory text and add in its place the number ''4''; and

b. Redesignate Table 3 immediately following paragraph (h) as Table 4.

9. Amend § 702.107 as follows:

a. Remove the number ''4'' from the parenthetical ''(Table 4)'' in the introductory text and adding in its place the number ''5'';

b. Add new paragraph (d) to read as set forth below; and

c. Redesignate Table 4 immediately following new paragraph (d) as Table 5; and

d. Add new section (d) to Table 5 as follows:

§ 702.107 Alternative Components for Standard Calculation.

* * * * * * *

(d) *Loans sold with recourse.* The alternative component is the sum of:

(1) Six percent (6%) of the amount of loans sold with contractual recourse obligations of six percent (6%) or greater; and

(2) The weighted average recourse percent of the amount of loans sold with contractual recourse obligations of less than six percent (6%), as computed by the credit union.

TABLE 5.—§ 702.107 ALTERNATIVE COMPONENTS FOR STANDARD CALCULATION

* * * * * * *

(d) Loans Sold With Recourse

Amount of loans by recourse	*Alternative risk weighting*
Recourse 6% or greater	.06
Recourse <6%	Weighted average recourse percent
The ''alternative component'' is the sum of each amount of the ''loans sold with recourse'' risk portfolio by level of recourse (as a percent of quarter-end total assets) times its alternative factor. The alternative factor for loans sold with recourse of less than 6% is equal to the weighted average recourse percent on such loans. A credit union must compute the weighted average recourse percent for its loans sold with recourse of less than six percent (6%). Substitute for corresponding standard component if smaller.	

10. Amend § 702.108 as follows:

a. Revise the section heading to read as set forth below;

b. Redesignate current paragraphs (a) and (b) as paragraphs (b) and (c), respectively;

c. Add a new paragraph (a) as set forth below; and

d. Revise newly designated paragraph (b) to read as set forth below.

§ 702.108 Risk mitigation credit.

(a) *Who may apply.* A credit union may apply for a risk mitigation credit if on any of the current or three preceding effective dates of classification it either failed an applicable RBNW requirement or met it by less than 100 basis points.

(b) *Application for credit.* Upon application pursuant to guidelines duly adopted by the NCUA Board, the NCUA Board may in its discretion grant a credit to reduce a risk-based net worth requirement under §§ 702.106 and 702.107 upon proof of mitigation of:

(1) Credit risk; or

(2) Interest rate risk as demonstrated by economic value exposure measures.

* * * * *

11. Revise the heading of Appendixes A–F to Subpart A of Part 702 to read as follows:

Appendixes A—H to Subpart A of Part 702

12. Redesignate Appendix F to Subpart A as Appendix H;

13. Add new Appendixes F and G to Subpart A as follows:

APPENDIX F—EXAMPLE LOANS SOLD WITH RECOURSE ALTERNATIVE COMPONENT, § 702.107(D)

[Example calculation in bold]

Percent of contractual recourse obligation	Dollar balance of loans sold with recourse	Percent of total assets (percent)	Alternative risk weighting	Alternative component (percent)
Recourse 6% or greater	5,000,000	2.5000	.06	0.1500
Recourse <6%	35,000,000	17.5000	[a].05	0.8750
Sum of above equals Alternative component*				1.03

*Substitute for corresponding standard component if lower.

[a] The credit union must calculate this alternative risk weighting for loans sold with recourse of less than 6%. For an example computation, see worksheet in Appendix G below.

APPENDIX G—WORKSHEET FOR ALTERNATIVE RISK WEIGHTING OF LOANS SOLD WITH CONTRACTUAL RECOURSE OBLIGATIONS OF LESS THAN 6%

[Example Calculation in Bold]

Percent of contractual recourse obligation less than 6%	Dollar balance of loans sold with recourse	Dollars of recourse	Alternative risk weighting (percent)
5.50%	5,000,000	275,000	
5.00%	25,000,000	1,250,000	
4.50%	5,000,000	2,250,000	
Sum of above equals	35,000,000	1,750,000	
Dollar of recourse divided by dollar balance equals (expressed as %)			5.00

14. Revise newly designated Appendix H to Subpart A to read as follows:

APPENDIX H—EXAMPLE RBNW REQUIREMENT USING ALTERNATIVE COMPONENTS

[Example Calculation in Bold]

Risk portfolio	Standard component (percent)	Alternative component (percent)	Lower of standard or alternative component (percent)
(a) Long-term real estate loans	2.20	2.85	2.20
(b) MBLs outstanding	0.77	0.95	0.77
(c) Investments	1.51	1.37	
(f) Loans sold with recourse	1.20	1.03	1.03
			Standard component
(d) Low-risk assets			0
(e) Average-risk assets			1.83
(g) Unused MBL commitments			0.15
(h) Allowance			(1.02)
RBNW requirement*—Compare to Net Worth Ratio			6.33

*A credit union is ''undercapitalized'' if its net worth ratio is less than its applicable RBNW requirement.

15. Revise § 702.201 to read as follows:

§ 702.201 Prompt corrective action for ''adequately capitalized'' credit unions.

(a) *Earnings retention.* Beginning the effective date of classification as

''adequately capitalized'' or lower, a federally-insured credit union must increase the dollar amount of its net worth quarterly either in the current quarter, or on average over the current and three preceding quarters, by an amount equivalent to at least 1/10th percent (0.1%) of its total assets, and must quarterly transfer that amount (or more by choice) from undivided earnings to its regular reserve account until it is ''well capitalized.''

(b) *Decrease in retention.* Upon written application received no later than 14 days before the quarter end, the NCUA Board, on a case-by-case basis, may permit a credit union to increase the dollar amount of its net worth and quarterly transfer an amount that is less than the amount required under paragraph (a) of this section, to the extent the NCUA Board determines that such lesser amount—

(1) Is necessary to avoid a significant redemption of shares; and

(2) Would further the purpose of this part.

(c) *Decrease by FISCU.* The NCUA Board shall consult and seek to work cooperatively with the appropriate State official before permitting a federally-insured State-chartered credit union to decrease its earnings retention under paragraph (b) of this section.

(d) *Periodic review.* A decision under paragraph (b) of this section to permit a credit union to decrease its earnings retention is subject to quarterly review

and revocation except when the credit union is operating under an approved net worth restoration plan that provides for decreasing its earnings retention as provided under paragraph (b).

16. Amend § 702.202 by removing the word ''transfer'' from the heading of paragraph (a)(1) and adding in its place the word ''retention.''

17. Amend § 702.203 by removing the word ''transfer'' from the heading of paragraph (a)(1) and adding in its place the word ''retention.''

18. Amend § 702.204 as follows:

a. Revise the heading of paragraph (a)(1) to read as set forth below;

b. Revise paragraph (c)(1)(iii) to read as set forth below;

c. Revise paragraph (c)(4) to read as set forth below; and

d. Add new paragraph (d) to read as follows:

§ 702.204 Prompt corrective action for ''critically undercapitalized'' credit unions.

(a) * * *

(1) *Earnings retention.* * * *

* * * * *

(c) * * *

(1) * * *

(iii) *Other corrective action.* Take other corrective action, in lieu of conservatorship or liquidation, to better achieve the purpose of this part, provided that the NCUA Board documents why such action in lieu of conservatorship or liquidation would do so, *provided however*, that other corrective action may consist, in whole or in part, of complying with the quarterly timetable of steps and meeting the quarterly net worth targets prescribed in an approved net worth restoration plan. * * *

(4) *Nondelegation.* The NCUA Board may not delegate its authority under paragraph (c) of this section, unless the credit union has less than $5,000,000 in total assets. A credit union shall have a right of direct appeal to the NCUA Board of any decision made by delegated authority under this section within ten (10) calendar days of the date of that decision.

(d) *Mandatory liquidation of insolvent federal credit union.* In lieu of paragraph (c) of this section, a ''critically undercapitalized'' federal credit union that has a net worth ratio of less than zero percent (0%) may be placed into liquidation on grounds of insolvency pursuant to 12 U.S.C. 1787(a)(1)(A).

19. Amend § 702.205 by removing from paragraph (c) the citation ''702.201(b)''.

20. Amend § 702.206 as follows:

a. Revise paragraph (c)(1)(ii) to read as set forth below;

b. Revise paragraph (c)(1)(iii) to read as set forth below; and

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

§ 702.206 Net worth restoration plans.

* * * * *

(c) * * *

(1) * * *

(ii) The projected amount of earnings to be transferred to the regular reserve account in each quarter of the term of the NWRP as required under § 702.201(a), or as permitted under § 702.201(b);

(iii) How the credit union will comply with the mandatory and any discretionary supervisory actions imposed on it by the NCUA Board under this subpart;

* * * * *

(i) *Publication.* An NWRP need not be published to be enforceable because publication would be contrary to the public interest.

21. Amend § 702.302 as follows:

a. Remove the number ''2'' from the parenthetical ''table 2)'' in the introductory text of paragraph (c) and add in its place the number ''6'';

b. Revise the table immediately preceding paragraph (d) to read as set forth below; and

c. Revise paragraph (d) to read as follows:

§ 702.302 Net worth categories for new credit unions.

* * * * *

TABLE 6.—NET WORTH CATEGORY CLASSIFICATION FOR ''NEW'' CREDIT UNIONS

A ''new'' credit union's net worth category is . . .	if its net worth ratio is . . .
''Well Capitalized''	7% or above
''Adequately Capitalized'' ...	6% to 6.99%
''Moderately Capitalized'' ...	3.5% to 5.99%
''Marginally Capitalized''	2% to 3.49%
''Minimally Capitalized''	0% to 1.99%
''Uncapitalized''	Less than 0%

(d) *Reclassification based on supervisory criteria other than net worth.* Subject to § 702.102(b) and (c), the NCUA Board may reclassify a ''well capitalized,'' ''adequately capitalized'' or ''moderately capitalized'' new credit union to the next lower net worth category (each of such actions is hereinafter referred to generally as ''reclassification'') in either of the circumstances prescribed in § 702.102(b).

* * * * *

22. Revise § 702.303 to read as follows:

§ 702.303 Prompt corrective action for ''adequately capitalized'' new credit unions.

Beginning on the effective date of classification, an ''adequately capitalized'' new credit union must increase the dollar amount of its net worth by the amount reflected in its approved initial or revised business plan in accordance with § 702.304(a)(2), or in the absence of such a plan, in accordance with § 702.201, and quarterly transfer that amount from undivided earnings to its regular reserve account, until it is ''well capitalized.''

23. Amend § 702.304 by revising paragraph (a) to read as follows:

§ 702.304 Prompt corrective action for ''moderately capitalized,'' ''marginally capitalized'' and ''minimally capitalized'' new credit unions.

(a) *Mandatory supervisory actions by new credit union.* Beginning on the date of classification as ''moderately capitalized,'' ''marginally capitalized'' or ''minimally capitalized'' (including by reclassification under § 702.302(d)), a new credit union must—

(1) *Earnings retention.* Increase the dollar amount of its net worth by the amount reflected in its approved initial or revised business plan and quarterly transfer that amount from undivided earnings to its regular reserve account;

(2) *Submit revised business plan.* Submit a revised business plan within the time provided by § 702.306 if the credit union either:

(i) Has not increased its net worth ratio consistent with its then-present approved business plan;

(ii) Has no then-present approved business plan; or

(iii) Has failed to comply with paragraph (a)(3) of this section; and

(3) *Restrict member business loans.* Not increase the total dollar amount of member business loans (defined as loans outstanding and unused commitments to lend) as of the preceding quarter-end unless it is granted an exception under 12 U.S.C. 1757a(b).

* * * * *

24. Amend § 702.305 as follows:

a. Revise paragraph (a) as set forth below;

b. Revise paragraph (c)(2) as set forth below; and

c. Add new paragraph (d) as follows:

§ 702.305 Prompt corrective action for ''uncapitalized'' new credit unions.

(a) *Mandatory supervisory actions by new credit union.* Beginning on the effective date of classification as ''uncapitalized,'' a new credit union must—

(1) *Earnings retention.* Increase the dollar amount of its net worth by the amount reflected in the credit union's approved initial or revised business plan;

(2) *Submit revised business plan.* Submit a revised business plan within the time provided by § 702.306, providing for alternative means of funding the credit union's earnings deficit, if the credit union either:

(i) Has not increased its net worth ratio consistent with its then-present approved business plan;

(ii) Has no then-present approved business plan; or

(iii) Has failed to comply with paragraph (a)(3) of this section; and

(3) *Restrict member business loans.* Not increase the total dollar amount of member business loans as provided in § 702.304(a)(3).

* * * * *

(c) * * *

(2) *Plan rejected, approved, implemented.* Except as provided in paragraph (c)(3) of this section, must place into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(ii), or conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), an ''uncapitalized'' new credit union that remains ''uncapitalized'' one hundred twenty (120) calendar days after the later of:

(i) The effective date of classification as ''uncapitalized''; or

(ii) The last day of the calendar month following expiration of the time period provided in the credit union's initial business plan (approved at the time its charter was granted) to remain ''uncapitalized,'' regardless whether a revised business plan was rejected, approved or implemented.

(3) *Exception.* The NCUA Board may decline to place a new credit union into liquidation or conservatorship as provided in paragraph (c)(2) of this section if the credit union documents to the NCUA Board why it is viable and has a reasonable prospect of becoming ''adequately capitalized.''

(d) *Mandatory liquidation of ''uncapitalized'' federal credit union.* In lieu of paragraph (c) of this section, an ''uncapitalized'' federal credit union may be placed into liquidation on grounds of insolvency pursuant to 12 U.S.C. 1787(a)(1)(A).

25. Amend § 702.306 as follows:

a. Revise paragraph (a) to read as set forth below;

b. Revise paragraph (b)(2) to read as set forth below; and

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

§ 702.306 Revised business plans for new credit unions.

(a) *Schedule for filing.* (1) *Generally.* Except as provided in paragraph (a)(2) of this section, a new credit union classified ''moderately capitalized'' or lower must file a written revised business plan (RBP) with the appropriate Regional Director and, if State-chartered, with the appropriate State official, within 30 calendar days of either:

(i) The last of the calendar month following the end of the calendar quarter that the credit union's net worth ratio has not increased consistent with its the-present approved business plan;

(ii) The effective date of classification as less than ''adequately capitalized'' if the credit union has no then-present approved business plan; or

(iii) The effective date of classification as less than ''adequately capitalized'' if the credit union has increased the total amount of member business loans in violation of § 702.304(a)(3).

(2) *Exception.* The NCUA Board may notify the credit union in writing that its RBP is to be filed within a different period or that it is not necessary to file an RBP.

(3) *Failure to timely file plan.* When a new credit union fails to file an RBP as provided under paragraphs (a)(1) or (a)(2) of this section, the NCUA Board shall promptly notify the credit union that it has failed to file an RBP and that it has 15 calendar days from receipt of that notice within which to do so.

(b) * * *

(2) Establish a timetable of quarterly targets for net worth during each year in which the RBP is in effect so that the credit union becomes ''adequately capitalized'' by the time it no longer qualifies as ''new'' per § 702.310(b);

* * * * *

(h) *Publication.* An RBP need not be published to be enforceable because publication would be contrary to the public interest.

26. Amend § 702.401 by revising paragraph (c) to read as follows:

§ 702.401 Reserves.

* * * * *

(c) *Charges to regular reserve after depleting undivided earnings.* The board of directors of a federally-insured credit union may authorize losses to be charged to the regular reserve after first depleting the balance of the undivided earnings account and other reserves, provided that the authorization states the amount and provides an explanation of the need for the charge, and either—

(1) The charge will not cause the credit union's net worth classification to fall below ''adequately capitalized'' under subparts B or C of this part; or

(2) If the charge will cause the net worth classification to fall below ''adequately capitalized,'' the appropriate Regional Director and, if State-chartered, the appropriate State official, have given written approval (in an NWRP or otherwise) for the charge.

* * * * *

27. Amend § 702.403 by revising paragraph (b) to read as follows:

§ 702.403 Payment of dividends.

* * * * *

(b) *Payment of dividends if undivided earnings depleted.* The board of directors of a ''well capitalized'' federally-insured credit union that has depleted the balance of its undivided earnings account may authorize a transfer of funds from the credit union's regular reserve account to undivided earnings to pay dividends, provided that either—

(1) The payment of dividends will not cause the credit union's net worth classification to fall below ''adequately capitalized'' under subpart B or C of this part; or

(2) If the payment of dividends will cause the net worth classification to fall below ''adequately capitalized,'' the appropriate Regional Director and, if State-chartered, the appropriate State official, have given prior written approval (in an NWRP or otherwise) to pay a dividend.

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781–1790, and 1790d. Section 741.4 is also authorized by 31 U.S.C. 3717.

2. Amend § 741.3 as follows:

a. Remove from the heading of paragraph (a) the words ''Adequacy of''.

b. Remove paragraph (a)(2); and

c. Redesignate current paragraph (a)(3) as paragraph (a)(2).

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

1. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 1786, 1784, 1787, 1790d and 4806(a); and 42 U.S.C. 4012a.

2. Amend § 747.2005 of subpart L by revising paragraph (b)(2) to read as follows:

§ 747.2005 Enforcement of orders.

* * * * *

(b) * * *

(2) *Failure to implement plan.* Pursuant to 12 U.S.C. 1786(k)(2)(A), the NCUA Board may assess a civil money penalty against a credit union which fails to implement a net worth restoration plan under subpart B of part 702 of this chapter or a revised business plan under subpart C of part 702, regardless whether the plan was published.

* * * * *

[FR Doc. 02–13931 Filed 6–3–02; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 50

[Docket Number 020509117–2117–01]

RIN Number 0607–AA36

Bureau of the Census Certification Process

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Bureau of the Census (Census Bureau) proposes to establish the process for requesting certification of Census Bureau documents (*i.e.,* tables, maps, reports, *etc.*) and the pricing structure for that service. A certification confirms that a product is a true and accurate copy of a Census Bureau document. The Census Bureau is proposing this rule to create a centralized system for certifying Census Bureau documents and to accurately reflect the true costs associated with certification.

DATES: Written comments must be submitted on or before July 5, 2002.

ADDRESSES: Please direct all written comments on this proposed program to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this proposed rule should be directed to Les Solomon, Chief, Customer Services Center, Marketing Services Office, U.S. Census Bureau, Room 1585, Federal Building 3, Washington, DC 20233, (301) 763–5377 or by fax (301) 457–4714.

SUPPLEMENTARY INFORMATION:

Background

At this time, there are no standard procedures or pricing policies in place regarding the certification process at the Census Bureau. Certifications are currently handled by individual divisions at the Census Bureau, and the prices charged do not reflect the full cost of the work involved.

Over the years, the volume of requests for certified Census Bureau documents has steadily increased. Title 13, section 8, allows the Census Bureau to provide certain statistical materials upon payment of costs for this service. With the release of Census 2000 data, the volume of requests for certified documents is expected to continue increasing. Substantial resources will be necessary to meet this demand. The proposed price structure reflects the cost of the resources used in fulfilling the expected requests, according to the kind of certification requested. Also reflected in the price is the level of difficulty (easy, moderate, or difficult) and time involved in compiling the certification. The two types of certification available are (1) ''Impressed,'' that is, impressing the Census Bureau seal on a document; and (2) ''Attestation,'' a signed statement by Census Bureau officials, attesting to the authenticity, accompanying a document onto which the Census Bureau seal has been impressed. Customers are to be charged a preset fee, as well as the standard cost of the data product (*e.g.,* report or map).

A certification may be needed for many reasons. For example, parties in a legal proceeding may wish to obtain a copy of a Census Bureau table or map that they wish to introduce into evidence, or local governments may need official certification of census counts and boundary changes.

In order to create consistent certification rules, the Census Bureau proposes the following amendment to title 15, Code of Federal Regulations (CFR), part 50:

- Add new section, 50.50, containing the Census Bureau's certification process.
- Establish a consistent pricing structure.
- Require requests for certifications to contain information on Form BC–1868(EF), Request for Official Certification. (*See* the Census Bureau's Web site, <*http://www.census.gov/mso/www/certification/*>.)

Administrative Procedure and Regulatory Flexibility Act

A notice of proposed rulemaking is not required by Title 5, United States Code (U.S.C.), section 553, or any other law, because this rule is procedural in nature and involves a matter relating to public property, loans, grants, benefits or contracts. Accordingly, it is exempt from the notice and comment provisions of the Administrative Procedure Act under 5 U.S.C. 553(a)(2) and 5 U.S.C. (b)(A). Therefore, the analytical requirements of the Regulatory Flexibility Act are not applicable (5 U.S.C. 601, *et seq.*). As a result, a Regulatory Flexibility Analysis is not required and none has been prepared.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), Title 44, U.S.C., Chapter 35, unless that collection of information displays a current Office of Management and Budget control number. This notice does not represent a collection of information and is not subject to the PRA's requirements. The form referenced in the rule, Form BC–1868(EF), will collect only information necessary to process a certification request. As such, it is not subject to the PRA's requirements (5 CFR 1320.3(h)(1)).

List of Subjects in 15 CFR Part 50

Census data, Population census, Seals and insignia, Statistics.

PART 50—SPECIAL SERVICES AND STUDIES BY THE BUREAU OF THE CENSUS

1. The authority citation for 15 CFR part 50 continues to read as follows:

Authority: Sec. 3, 49 Stat. 293, as amended; 15 U.S.C. 192a. Interprets or applies sec. 1, 40 Stat. 1256, as amended; sec. 1, 49 Stat. 292; sec. 8, 60 Stat. 1013, as amended; 15 U.S.C. 192, 189a, 13 U.S.C. 8.

2. Add § 50.50 to read as follows:

§ 50.50 Request for certification.

(a) Upon request, the Census Bureau certifies certain statistical materials (such as the population and housing unit counts of government entities, published tabulations, maps, and other documents). The Census Bureau charges customers a preset fee for this service according to the kind of certification requested (either an impressed document or an attestation) and the level of difficulty involved in compiling it (easy, moderate, or difficult, determined according to the resources expended) as well as the set cost of the data product (e.g., report or map) to be certified. Certification prices are shown in the following table:

PRICE BY TYPE OF CERTIFICATION

Product	Estimated price	Estimated time to complete (hours)
Impress-easy	$70.00	1.5
Impress-medium	110.00	3
Impress-difficult	150.00	4.5
Attestation-easy	160.00	3
Attestation-medium	200.00	4.5
Attestation-difficult	240.00	6

(b) There are two forms of certification available: Impressed Documents and Attestation.

(1) *Impressed Documents.* An impressed document is one that is certified by impressing the Census Bureau seal on the document itself. The Census Bureau act, Title 13, United States Code, Section 3, provides that the seal of the Census Bureau shall be affixed to all documents authenticated by the Census Bureau and that judicial notice shall be taken of the seal. This process attests that the document on which the seal is impressed is a true and accurate copy of a Census Bureau record.

(2) *Attestation.* Attestation is a more formal process of certification. It consists of a signed statement by a Census Bureau official that the document is authentic and produced or published by the agency, followed by a signed statement of another Census Bureau official witnessing the authority of the first.

(c) Requests for certification should be submitted on Form BC–1868(EF), Request for Official Certification, to the Census Bureau by fax, (301) 457–4714 or by e-mail, *webmaster@census.gov.* Form BC–1868(EF) will be available on the Census Bureau's Web site at: *http://www.census.gov/mso/www/certification/.* A letter request—without Form BC–1868(EF)—will be accepted only if it contains the information necessary to complete a Form BC–1868(EF). No certification request will be processed without payment of the required fee.

Dated: May 9, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–13603 Filed 6–3–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–237–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing a proposed amendment to the Kentucky regulatory program (the ''Kentucky program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposes additions to its statutes about incidental coal removal and intends to revise its program to be consistent with SMCRA. This document gives the times and locations that the Kentucky program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., e.s.t. July 5, 2002. If requested, we will hold a public hearing on the amendment on July 1, 2002. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on June 19, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to William J. Kovacic at the address listed below.

You may review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Lexington Field Office. William J. Kovacic, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260–8400. E-mail: *bkovacic@osmre.gov.* Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400. Internet: *bkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program.
II. Description of the Proposed Amendment.
III. Public Comment Procedures.
IV. Procedural Determinations.

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated April 12, 2002 (Administrative Record No. KY–1529), Kentucky sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky sent the amendment at its own initiative. The full text of the amended language follows. The language comprises a new section of the Kentucky Revised Statutes at Chapter 350 and is referenced as Kentucky House Bill 405.

Kentucky defines ''private land'' as ''property that is owned by a not-for-profit organization or by a noncommercial private owner and is subject to the construction of improvements on that property, and includes land that requires alteration, modification, excavation, or landscaping in order to make it relate to, and support the function of, a facility or improvement. Private land includes but is not limited to a parking lot for a church, a recreational facility or court for a school, and land alteration related to improvements to a private residence or other private use.''

Kentucky further specifies that ''removal of coal on private land, incidentally and as a necessary requirement of facility construction, or as a consequence of the excavation or landscaping required to make the land support the intended function of a facility under construction, shall not require the owner of that private land to obtain a surface mining permit as required under this chapter, or a mining licenses as required under this chapter, if: (a) The coal removed is five thousand tons or less; (b) the coal removed is donated to a charitable, educational, or governmental organization, or the coal is sold and the proceeds are donated to such an organization; and (c) the landowner notifies the cabinet at the time that coal is first encountered and prior to removal, and if after inspection and review of site plans, construction contracts, or other indicia, the cabinet determines that the proposed project is eligible for this exemption. The cabinet may require implementation of such best management practices as are necessary to ensure compliance with stormwater discharge limits.''

Kentucky is also requiring that, ''the cabinet within ten days of the effective date of this Act, seek an opinion from the Federal Office of Surface Mining relating to the provisions of this section and shall not implement or administer the provisions of subsection (2) of this section until July 1, 2004. However, if the cabinet receives a Federal Office of Surface Mining determination that subsections (1) to (2) of this section, and any related administrative regulations of the cabinet, are consistent with, or otherwise not in violation of, the Federal Surface Mining Control and Reclamation Act of 1977, the cabinet may implement and administer the provisions of subsection (2) of this section prior to July 1, 2004.''

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see DATES). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Lexington Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. KY–231-FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859) 260–8400.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. June 19, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a)

and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C.804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 26, 2002.

George J. Rieger,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02–13986 Filed 6–3–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

National Imagery and Mapping Agency

32 CFR Part 320

[NIMA Instruction 5500.7R1]

Privacy Act; Implementation

AGENCY: National Imagery and Mapping Agency, DoD.

ACTION: Proposed rule.

SUMMARY: The National Imagery and Mapping Agency (NIMA) is proposing to add an exemption rule to an existing system of records. The exemption will increase the value of the system of records for law enforcement purposes, and will protect the privacy of individuals identified in the system of records.

DATES: Comments must be received on or before August 5, 2002 to be considered by this agency.

ADDRESSES: Comments should be sent to the Office of General Counsel, National Imagery and Mapping Agency, Mail Stop D–10, 4600 Sangamore Road, Bethesda, MD 20816–5003.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Willess, Associate General Counsel, at (301) 227–2953.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

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

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

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

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

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 320

Privacy.

Accordingly, 32 CFR part 320 is amended as follows:

1. The authority citation for 32 CFR part 320 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1986 (5 U.S.C. 552a).

2. Section 320.12 is amended by adding paragraph (b) to read as follows:

§ 320.12 Exemptions.

* * * * *

(b) *System identifier and name.* B0210–07, Inspector General Investigative and Complaint Files.

(1) *Exemptions:* (i) Investigative material compiled for law enforcement purposes 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 such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigative 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.

(iii) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(2) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(3) *Reasons:* (i) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by the NIMA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NIMA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(vi) Consistent with the legislative purpose of the Privacy Act of 1974, NIMA will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NIMA's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

Dated: May 29, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–13898 Filed 6–3–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is proposing to add an exemption rule for the system of records F051 AF JA I, Commander Directed Inquiries. The (k)(2) exemption will increase the value of the system of records for law enforcement purposes.

DATES: Comments must be received on or before August 5, 2002, to be considered by this agency.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

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

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

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

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

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 806b

Privacy.

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

Accordingly, 32 CFR part 806b is revised as follows:

2. Appendix C to part 806b is amended by adding paragraph (b)(22) to read as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

Appendix C to Part 806b—General and Specific Exemptions

* * * * *

(b) Specific exemptions. * * *

(22) *System identifier and name:* F051 AF JA I, Commander Directed Inquiries.

(i) *Exemption:* (1) 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 identity of a confidential source. *Note:* When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(2) Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority:* 5 U.S.C. 552a(k)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(F) Consistent with the legislative purpose of the Privacy Act of 1974, the Air Force will grant access to nonexempt material in the records being maintained. Disclosure will be governed by Air Force's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil

violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

Dated: May 29, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–13900 Filed 6–3–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Juan–02–038]

RIN 2115–AA97

Safety Zones; Ponce Bay, Tallaboa Bay, and Guayanilla Bay, Puerto Rico and Limetree Bay, St. Croix, U.S.V.I.

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create moving safety zones around all Liquefied Hazardous Gas (LHG) vessels with product aboard in the waters of the Caribbean Sea and the Bays of Ponce, Tallaboa, Guayanilla, Puerto Rico and Limetree Bay, U.S. Virgin Islands. This action is necessary due to the highly volatile nature of this cargo. This proposed rule would enhance public and maritime safety by requiring vessel traffic to maintain a safe distance from these LHG vessels while they are underway.

DATES: Comments and related material must reach the Coast Guard on or before August 5, 2002.

ADDRESSES: You may mail comments and related material to Commanding Officer, Marine Safety Office San Juan, P.O. Box 71526, San Juan, Puerto Rico 00936. You may also deliver them in person to Commanding Officer, Marine Safety Office San Juan, Rodriguez and Del Valle Building, 4th Floor, Calle San Martin, Road #2, Guaynabo, Puerto Rico, 00968. The U.S. Coast Guard Marine Safety Office maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the USCG Marine Safety Office between the hours of 7 a.m. and 3:30 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Lieutenant Chip Lopez at Coast Guard Marine Safety Office San Juan, Puerto Rico, at (787) 706–2444.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP San Juan–02–038], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one by writing to the Commanding Officer, U.S. Coast Guard Marine Safety Office at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

These regulations are needed to provide for the safety of life on navigable waters from the hazards associated with LHG carriers. The safety zones are needed because of the significant risks Liquefied Hazardous Gas (LHG) ships present to public safety due to their size, draft, and volatile cargoes. We anticipate periodic arrivals of vessels carrying LHG in Ponce, Tallaboa and Guayanilla Bays, Puerto Rico and Limetree Bay, St. Croix, U.S.V.I. This proposed rule would keep vessel traffic at least 100 yards away from LHG vessels thereby decreasing the risk of a collision, allision, or grounding.

Discussion of Proposed Rule

This proposed rule would create a 100-yard safety zone in the waters of the Caribbean Sea surrounding all LHG vessels with product aboard while transiting on approach to or departing from the following Ports, north of the latitudes indicated. Port of Ponce, Puerto Rico north of Latitude 17° 56.00′ N. Ports of Tallaboa and Guayanilla, Puerto Rico north of Latitude 17° 57.00′ N. Port of Limetree Bay, St. Croix, U.S. Virgin Islands north of 17° 39.00′ N. (NAD 83) These safety zones would remain in effect until the LHG vessel is safely moored. The Marine Safety Office San Juan would notify the maritime community of periods during which these safety zones would be in effect by providing advance notice of scheduled arrivals and departures on LHG carriers via a broadcast notice to mariners on VHF Marine Band Radio, Channel 16 (156.8 MHz).

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary due to the relative infrequent arrivals of LHG carriers, the limited size of the safety zone, and the relatively sparse nature of other commercial traffic in Ponce, Tallaboa, Guayanilla, and Limetree Bays.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not

dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because of the relative infrequent arrivals of LHG carriers, the limited size of the safety zone, and the relatively sparse nature of other commercial traffic in Ponce, Tallaboa, Guayanilla, and Limetree Bays. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its proposed effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Chip Lopez at Coast Guard Marine Safety Office San Juan, Puerto Rico, (787) 706–2444.

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

Collection of Information

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

Federalism

We have analyzed this proposed rule under Executive Order 13132, Federalism, and have determined that it does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34) (g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because it is establishing safety zones. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.757 to read as follows:

§ 165.757 Safety Zones; Ports of Ponce, Tallaboa, and Guayanilla, Puerto Rico and Limetree Bay, St. Croix, U.S.V.I.

(a) The following areas are established as safety zones during the specified conditions:

(1) *Port of Ponce, Puerto Rico.* A 100-yard radius surrounding all Liquefied Hazardous Gas (LHG) vessels with product aboard while transiting north of Latitude 17°57.0′ N in the waters of the Caribbean Sea on approach to or departing from the Port of Ponce, Puerto Rico. (NAD 83) The safety zone remains in effect until the LHG vessel is docked.

(2) *Port of Tallaboa, Puerto Rico.* 100-yard radius surrounding all Liquefied Hazardous Gas (LHG) vessels with product aboard while transiting north of Latitude 17°56.0′ N in the waters of the Caribbean Sea on approach to or departing from the Port of Tallaboa, Puerto Rico. (NAD 83) The safety zone remains in effect until the LHG vessel is docked.

(3) *Port of Guayanilla, Puerto Rico.* A 100-yard radius surrounding all

Liquefied Hazardous Gas (LHG) vessels around with product aboard while transiting north of Latitude 17°57.0′ N in the waters of the Caribbean Sea on approach to or departing from the Port of Guayanilla, Puerto Rico. (NAD 83) The safety zone remains in effect until the LHG vessel is docked.

(4) *Port of Limetree Bay, St. Croix, U.S.V.I.* A 100-yard radius surrounding all Liquefied Hazardous Gas (LHG) vessels with product aboard while transiting north of Latitude 17°39.0′ N in the waters of the Caribbean Sea on approach to or departing from the Port of Limetree Bay, U.S.V.I. (NAD 83) The safety zone remains in effect until the LHG vessel is docked.

(b) In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in these zones is prohibited unless authorized by the Coast Guard Captain of the Port. The Marine Safety Office San Juan will notify the maritime community of periods during which these safety zones will be in effect by providing advance notice of scheduled arrivals and departures on LHG carriers via a broadcast notice to mariners on VHF Marine Band Radio, Channel 16 (156.8 MHz).

Dated: May 14, 2002.

J.A. Servidio,

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

[FR Doc. 02–13969 Filed 6–3–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 264–0346b; FRL–7219–3]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from surface cleaning and degreasing. We are proposing to approve the local rule to regulate these emission sources under the Clean Air Act as amended in 1990.

DATES: Any comments on this proposal must arrive by July 5, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95812.

Ventura County Air pollution Control District, 669 County Square Dr., 2nd FL., Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (Air–4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: This proposal addresses local rule, VCAPCD 74.6. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Anyone interested in commenting should do so at this time, as we do not plan to open a second comment period. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 13, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–13799 Filed 6–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7222–6]

RIN 2060–AK07

Regulation of Fuels and Fuel Additives: Modifications to Reformulated Gasoline Covered Area Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make several minor modifications to its reformulated gasoline (RFG) regulations to reflect changes in the covered areas for the federal RFG program, and to delete obsolete language and clarify existing language in the provisions listing the federal RFG covered areas. These changes include: Deleting the seven southern counties in Maine from the RFG covered areas list, reflecting their opt-out of the RFG program as of March 10, 1999; adding the Sacramento Metro and San Joaquin Valley nonattainment areas to the list of RFG covered areas, reflecting the Sacramento Metro Area's inclusion in the RFG program as of June 1, 1996 and the San Joaquin Valley Area's inclusion in the RFG program on December 10, 2002; and deleting the text which extended the RFG opt-in provisions to all ozone nonattainment areas including previously designated ozone nonattainment areas, reflecting a court decision in January, 2000, which invalidated this language. This proposal also makes certain other minor changes in the provisions listing the RFG covered areas for purposes of clarification. In the Final Rules section of this **Federal Register**, EPA is approving these modifications as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for these modifications is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before July 5, 2002.

ADDRESSES: Comments should be mailed (in duplicate if possible) to John Brophy, Office of Transportation and Air Quality (mail code 6406J), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460, and to the following docket address: Docket A–2001–32, Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in room M–1500 Waterside Mall. Materials relevant to today's rulemaking have been placed in the Docket A–2001–32 at the docket address listed above, and may be inspected on business days from 8:00

a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material.

Materials relevant to today's rulemaking regarding the removal of the seven Maine counties from the federal RFG program are also available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA–New England, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333. For further information, contact Robert C. Judge at (617) 918–1045.

Materials relevant to today's rulemaking regarding the self-executing change in status of the Sacramento Metro and San Joaquin Valley nonattainment areas are also available for inspection during normal business hours in the Air Docket, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. This rule and the Technical Support Documents for the proposed actions are also available in the air programs section of EPA Region 9's website, *http://www.epa.gov/region09/air.* Interested persons may make an appointment with Ms. Virginia Peterson at (415) 744–1265, to inspect the docket between 9:00 a.m. and 4:00 p.m. A reasonable fee may be charged for copying docket material.

There are several other dockets that may also contain related materials of interest to the public:

Materials relevant to EPA's approval of a State Implementation Plan (SIP) revision submitted by the State of Maine are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M–1500, 401 M Street, (Mail Code 6102), SW., Washington, DC; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333. For further information, contact Robert C. Judge at (617) 918–1045.

Materials regarding the reclassification of the Sacramento Metro Area as a ''Severe'' ozone nonattainment area are in Docket A–94–09. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in room M–1500 Waterside Mall. Documents may be inspected on business days from 8:00 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material.

Materials regarding the reclassification of the San Joaquin Valley Area as a ''Severe'' ozone nonattainment area are available for inspection during normal business hours in the Air Docket, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. This rule and the Technical Support Documents for the proposed actions are also available in the air programs section of EPA Region 9's website, *http://www.epa.gov/region09/air.* Interested persons may make an appointment with Ms. Virginia Peterson at (415) 744–1265, to inspect the docket between 9:00 a.m. and 4:00 p.m. A reasonable fee may be charged for copying docket material.

Materials regarding the extension of the RFG opt-in provisions to all ozone nonattainment areas including previously designated ozone nonattainment areas, and the January, 2000, court decision, are in Docket A–96–30. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in room M–1500 Waterside Mall. Documents may be inspected on business days from 8:00 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material.

Materials relevant to the removal of the Phoenix area from the federal RFG program are in Docket A–98–23. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in room M–1500 Waterside Mall. Documents may be inspected on business days from 8:00 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: John Brophy, U.S. Environmental Protection Agency, Office of Air and Radiation, 1200 Pennsylvania Ave., NW (Mail Code 6406J), Washington, DC 20460, (202) 564–9068, e-mail address: brophy.john@epa.gov

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

I. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This proposed action does not impose any new information collection burden. Today's proposed rule merely amends EPA's regulations to reflect the current status of covered areas within the RFG program. These various changes in status are not dependant on today's proposed rulemaking, but have occurred (or will occur) as the result of separate agency action and self-executing statutory provisions. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing *[RFG]* regulations [CFR citation—40 CFR part 80, subparts D, E and F,] under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0277 (EPA ICR No. 1591.13).

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.* Include the ICR and / or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of

collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's proposed rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, Apr. 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. This proposed rule simply makes several minor modifications in the regulations to reflect changes in the covered areas for the federal RFG program, and to delete obsolete language and clarify existing language in the provisions listing the federal RFG covered areas. Thus, Executive Order 13132 does not apply to this proposed rule.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub L. No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed action does not involve technical standards. This proposed rule simply makes several minor modifications in the regulations to reflect changes in the covered areas for the federal RFG program, and to delete obsolete language and clarify existing language in the provisions listing the federal RFG covered areas. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A firm having no more than 1,500 employees and no more than 75,000 barrels per day capacity of petroleum-based inputs, including

crude oil or bona fide feedstocks;.[1] according to Small Business Administration (SBA) size standards established under the North American Industry Classification System (NAICS); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's rule revises the introductory text of § 80.70(j) to distinguish the nonattainment areas that have opted into the RFG program from those that are required to be in the program under the Clean Air Act. In addition, today's rule revises the text of sections 80.70(l) and (n) to make these provisions clearer. These minor revisions are strictly organizational and do not change the substance or intent of these provisions in any way. Today's rule also removes the current provisions of § 80.70(m) relating to Phoenix as an opt-in covered area, since the Phoenix area is no longer a covered area as of June 10, 1998. Published on August 11, 1998, in the **Federal Register** (at 63 FR 43044) is a public announcement of EPA's approval of the Arizona Governor's petition and the effective date of the Phoenix opt-out. The opt-out effective date for the Phoenix area was June 10, 1998. The provisions for the Sacramento and San Joaquin Valley covered areas, described above, are included in a new § 80.70(m).

Today's amendments to the CFR reflect changes that have occurred in separate actions in accordance with EPA's regulations and the CAA. This rule is not itself an approval of Maine's or Arizona's opt-out request—Agency action approving those petitions occurred earlier in separate administrative proceedings. Similarly, neither the reclassification of the Sacramento and San Joaquin Valley nonattainment areas, nor the self-executing change in status of these areas to RFG ''covered areas,'' are dependent on today's action. EPA is simply modifying the list of covered areas in the RFG regulations, 40 CFR 80.70, so the list will reflect EPA's earlier approval of the Maine and Arizona opt-out requests, and the self-executing change in the status of the Sacramento and San Joaquin Valley nonattainment areas. Thus, the various elements of today's direct final rule involve little or no exercise of agency discretion. Rather today's actions essentially are ministerial regulatory amendments.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's proposed rule does not have tribal implications and will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule simply makes several minor modifications in the regulations to reflect changes in the covered areas for the federal RFG program, and to delete obsolete language and clarify existing language in the provisions listing the federal RFG covered areas. Thus, Executive Order 13175 does not apply to this proposed rule.

I. Executive Order 13211 (Energy Effects)

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

II. Statutory Authority

The Statutory authority for the proposed action today is granted to EPA by sections 211(c) and (k), 301, and 307 of the Clean Air Act, as amended; 42 U.S.C. 7545(c) and (k), 7601, 7607; and 5 U.S.C. 553(b).

III. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this proposed action must be filed in the United States Court of Appeals for the appropriate circuit by August 5, 2002. Filing a petition for reconsideration by the Administrator of this proposed 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 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 23, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–13977 Filed 6–3–02; 8:45 am]

BILLING CODE 6560–50–P

[1] Capacity includes owned or leased facilities as well as facilities under a processing agreement or an agreement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 02–113; FCC 02–150]

Broadcast Services; Television Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on the policy it should follow when it denies a request to extend a television station's digital television construction deadline.

DATES: Comments are due by July 8, 2002; reply comments are due by July 23, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Media Bureau, Office of Broadcast Licensing, Video Division, (202) 418–2324. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Notice of Proposed Rule Making (''NPRM'')* in MM Docket No. 02–113, FCC 02–150, adopted May 16, 2002, and released May 24, 2002. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554. The *Notice* is also available on the Internet at the Commission's website: *http://www.fcc.gov.*

Synopsis

1. The Commission has adopted this *NPRM* to seek comment on the policy it should follow when requests to extend DTV construction deadlines are denied. The Commission proposed a set of graduated sanctions that it would impose. Under the first step of its approach, the Commission would deny the request for an unqualified extension and admonish the station for its failure to comply with its DTV construction obligation. The station would be required to submit a report within thirty (30) days outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than six months from the date of admonishment. Sixty (60) days later, the station would be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this six month period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or the Commission otherwise find that the licensee has acted in bad faith, the Commission would consider the imposition of additional sanctions including proceeding immediately to the second step.

2. Under the second step in the approach, if the station had not come into compliance with the DTV construction rule within the six month period, then, absent extraordinary and compelling circumstances, the Commission would impose further sanctions against the licensee. The Commission would issue a Notice of Apparent Liability for forfeiture to the licensee. It would require that the station report every thirty (30) days on its proposed construction milestones and its efforts to meet those milestones. Once again, failure to adequately demonstrate that the station was taking all reasonable steps towards construction and to justify any additional delays that were encountered, would result in the imposition of additional sanctions.

3. Under the third and final step in the approach, if the station still had failed to come into compliance with the DTV construction rule within an additional six-month period of time (i.e., one year from the date of the formal admonition), then, absent extraordinary and compelling circumstances, the Commission would consider its construction permit for its DTV facilities to have expired and it would take whatever steps necessary to rescind the station's DTV authorization. The Commission seeks comment as to whether a hearing is necessary under section 312 or section 316 of the Communications Act prior to removal of the station's DTV authorization. The Commission also seeks comment as to whether it should make the station's vacant DTV allotment available to other potential DTV broadcasters through auction, or delete the allotment from the DTV Table altogether. In any event, however, as directed by Congress, the station will be required to surrender its analog authorization at the end of the DTV transition. The Commission tentatively concludes that a licensee whose DTV authorization is rescinded under the above procedures will not be permitted to convert to digital on its analog allotment without being subject to competing applications.

4. The Commission reserved the right to alter its graduated enforcement scheme should circumstances in a particular case warrant it doing so.

Administrative Matters

5. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before July 8, 2002 and reply comments on or before July 23, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24,121 (1998). Written comments by the public on the proposed information collections are due July 8, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before August 5, 2002.

6. Comments filed through ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings 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 a.m. to 7 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, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

7. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, SW., Room, 2–C207, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible

format using MS Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case, MM Docket No. 02–113, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Vistronix, Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554.

8. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Jeanette__I.__Thornton@omb.eop.gov.*

9. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 Twelfth Street, SW., CY–A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0270, (202) 418–2555 TTY, or *bcline@fcc.gov.* Comments and reply comments also will be available electronically at the Commission's Disabilities Issues Task Force web site: *www.fcc.gov/dtf.* Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat.

10. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Martha Contee at (202) 4810–0260, TTY (202) 418–2555, or *mcontee@fcc.gov.*

11. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

12. *Initial Regulatory Flexibility Analysis.* As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following IRFA of the possible significant economic impact on small entities of the proposals contained in this *NPRM.* Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the radio broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *NPRM,* but they must have a distinct heading designating them as responses to the IRFA.

13. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above in paragraph 16. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a). In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

14. The Commission adopts the *NPRM* to seek comment on proposed remedial steps for failure to comply with its digital television (DTV) construction schedule. The remedial steps are intended to prevent undue delay in the required build out of DTV facilities.

B. Legal Basis

15. This *NPRM* is adopted pursuant to sections 1, 2(a), 4(i), 303, 307, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307 and 309.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

16. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business'' concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

17. The proposals in the *NPRM* will affect only full-power television broadcasters. As of September 30, 2001 the Commission had licensed a total of 1,686 full-power television stations. SBA defines television broadcasting establishments that have $12 million or less in annual receipts as a small business. According to Census Bureau data for 1997, there were 906 firms in this category, total, that operated for the entire year. Of this total, 728 firms had annual receipts of under $10 million, and an additional 71 had receipts of $10 million to $24,999,999. Thus, under this size standard, the majority of the firms are considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

18. This *NPRM* contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

20. The *NPRM* seeks comment on proposed remedial steps for failure of broadcast stations to comply with the DTV construction schedule. Adoption of the proposal in the *NPRM* by the

Commission is likely to have an insignificant and mixed impact overall on the economic opportunities for small entities. We seek comment from small entities on this issue.

21. One of the sanctions that the Commission proposing using is the issuance of a notice of apparent liability for forfeiture to stations that do not comply with their DTV construction obligation. We seek comment on any small entity concerns that might affect the Commission's enforcement decisions. We note that we already take small entity status, including potential inability to pay, into account when assessing the need for, and amount of, monetary forfeitures.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

22. None.

23. *Paperwork Reduction Act.* This *NPRM* contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *NPRM*; OMB notification of action is due August 5, 2002. Comments should address: (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 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.

OMB Control Number: 3060–XXXX.

Title: Remedial Steps for Failure to Comply with Digital Television Construction Schedule.

Form No.: n/a.

Type of Review: New collection.

Respondents: business or other for-profit; not-for-profit institutions.

Number of Respondents: 100.

Estimated Time Per Response: 2 hours (0.5 hours licensee; 1.5 hours contract attorney).

Frequency of Response: reporting, on occasion.

Total Annual Burden: 50 hours.

Total Annual Costs: $30,000.

Needs and Uses: The Commission is seeking comment on proposed remedial steps for failure to comply with its DTV construction schedule. These steps include proposed reporting requirements. The remedial steps are intended to prevent undue delay in the required build out of DTV facilities.

24. *Authority.* This *NPRM* is issued pursuant to authority contained in Sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 307, and Section 202(h) of the Telecommunications Act of 1996.

Ordering Clauses

25. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and Section 202(h) of the Telecommunications Act of 1996, this *NPRM* is adopted.

26. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–13908 Filed 6–3–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No.020523130–2130–01; I.D. No. 040102D]

RIN 0648–AP94

Listing Endangered and Threatened Wildlife and Designating Critical Habitat; 90-day Finding for a Petition to Reclassify the Northern and Florida Panhandle Subpopulations of the Loggerhead as Distinct Population Segments with Endangered Status and to Designate Critical Habitat

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

ACTION: Notice of petition finding; request for information and comments.

SUMMARY: The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, announces the 90-day finding for a petition to reclassify the Northern and Florida Panhandle subpopulations of the loggerhead turtle (*Caretta caretta*), now listed as threatened throughout their range, as distinct population segments with endangered status and designate critical habitat under the Endangered Species Act of 1973, as amended (ESA). We find that the petition presents substantial scientific information indicating that the petitioned action may be warranted.

We are initiating a review of the status of the species to determine whether the petitioned action is warranted. To ensure a comprehensive review, we are soliciting information and comments pertaining to this species from any interested party.

DATES: Written comments and information related to this petition finding must be received [see **ADDRESSES**] by August 5, 2002.

ADDRESSES: Written comments and information should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet. The petition is available for public inspection, by appointment, during normal business hours at the above address. The petition may also be found at the following website: *http://www.nmfs.noaa.gov/prot__res/PR3/Turtles/turtles.html.*

FOR FURTHER INFORMATION CONTACT: Barbara Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail barbara.schroeder@noaa.gov).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1531 *et seq.*) requires us to make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Our implementing regulations (50 CFR 424.14) define ''substantial information'' as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In determining whether substantial information exists, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the

finding is to be published promptly in the **Federal Register**. If we find that a petition presents substantial information indicating that the requested action may be warranted, we are also required to conduct a status review of the species. The determination of whether or not the petition is warranted must be made within one year of the receipt of the petition.

Analysis of Petition

On January 14, 2002, we received a petition from the Earthjustice Legal Defense Fund, on behalf of the Turtle Island Restoration Network and the Center for Biological Diversity, requesting that the Northern and Florida Panhandle subpopulations of the loggerhead be reclassified as distinct population segments (see *Petition Finding* for discussion on distinct population segments) with endangered status throughout their range and that critical habitat be designated. In addition, the petition requested an emergency rule be issued for the same.

The petition contains a detailed description of the species legal status, life history parameters, geographic range, population status and trends, and factors contributing to the decline in several subpopulations. The petition cites key documents recognizing the identification of genetically different loggerhead subpopulations (Turtle Expert Working Group (TEWG) 1998, 2000; NMFS Southeast Fisheries Science Center (SEFSC) 2001). At least five different subpopulations in the Western North Atlantic and Gulf of Mexico have been identified (NMFS SEFSC 2001). The subpopulations are divided geographically as follows: (1) A Northern nesting subpopulation, occurring from North Carolina to northeast Florida at about 29° N (approximately 7,500 nests in 1998); (2) a South Florida nesting subpopulation, occurring from 29° N on the east coast to Sarasota on the west coast (approximately 83,400 nests in 1998); (3) a Florida Panhandle nesting subpopulation, occurring at Eglin Air Force Base and the beaches near Panama City, FL (approximately 1,200 nests in 1998); (4) a Yucatán nesting subpopulation, occurring on the eastern Yucatán Peninsula, Mexico (Márquez 1990) (approximately 1,000 nests in 1998) (TEWG 2000); and (5) a Dry Tortugas nesting subpopulation, occurring in the islands of the Dry Tortugas, near Key West, FL (approximately 200 nests per year) (NMFS SEFSC 2001). Recent fine-scale mitochondrial deoxyribonucleic acid (mtDNA) analysis from Florida rookeries indicate that population separations begin to appear between nesting beaches separated by more than 100 kilometers (62 miles) of coastline that do not host nesting (Francisco *et al.*, 2000). Tagging studies of nesting females corroborate these findings (Ehrhart 1979, LeBuff 1990) and affirm loggerhead nest site fidelity, with rare exceptions.

The petition maintains that the Northern subpopulation has declined dramatically over the past 20 years. The petition refers to nesting trends at Cape Island, SC, and Little Cumberland Island, Georgia –nesting beaches that have been consistently surveyed since the early 1970s. From 1973 to 1995, nesting at Cape Island declined on average 3.2 percent per year, and from 1964 to 1995, Little Cumberland nesting activity declined at 2.6 percent per year. Regarding the Florida Panhandle subpopulation, the petition asserts that the population's small size (less than 1,000 annual nesters) would not withstand catastrophic events and warrants rigorous management.

The petition asserts that the Northern and Florida Panhandle subpopulations are endangered because they are in imminent danger of extirpation from their ranges and identifies several threats including commercial fishing, coastal development, and pollution. The petition discusses the significance of the Northern and Florida Panhandle subpopulations and states that if either were extirpated, re-establishment is unlikely and the loss of genetic contribution to the species would be permanent. The petition also states that the Northern subpopulation produces a higher percentage of male hatchlings and the extirpation of this nesting assemblage would seriously hamper male-mediated gene flow.

Petition Finding

Based on the above information and criteria specified in 50 CFR 424.14(b)(2), we find the petitioner presents substantial scientific and commercial information indicating that a reclassification of the Northern and Florida Panhandle loggerhead subpopulations as distinct population segments with endangered status may be warranted. The ESA defines a ''species'' as ''...any subspecies of fish or wildlife or plants and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' NMFS and the U.S. Fish and Wildlife Service published a joint policy defining the phrase ''distinct population segment'' on February 7, 1996 (61 FR 4722). Three elements are considered in a decision regarding the listing, delisting, or reclassification of a distinct population segment as endangered or threatened under the ESA: discreteness of the population segment in relation to the remainder of the species, significance of the population segment to the species, and conservation status. Under section 4(b)(3) of the ESA, an affirmative 90–day finding requires that we commence a status review on the loggerhead turtle. We are initiating this review and, once it has been completed, a finding will be made as to whether reclassification of the Northern and Florida Panhandle loggerhead subpopulations as distinct population segments with endangered status is warranted, warranted but precluded by higher priority listing actions, or not warranted, as required by section 4(b)(3) of the ESA.

Designation of critical habitat is not subject to the ESA's petition provision; however, the ESA requires us to make a critical habitat determination concurrent with listing determinations. The ESA defines ''critical habitat'' as ''...the specific areas within the geographical area occupied by the species, at the time it is listed... on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and... specific areas outside the geographical area occupied by the species at the time it is listed... upon a determination... that such areas are essential for the conservation of the species.''

Species are considered for emergency listing when the immediacy of the threat is so great to a significant proportion of the total population that the routine listing process is not sufficient to prevent large losses that may result in extinction. Expected losses during the normal listing process that would risk the continued existence of the entire species are grounds for an emergency rule. The purpose of the emergency rule provision of the ESA is to prevent species from becoming extinct by affording them immediate protection while the normal rulemaking procedures are being followed. Taking this into consideration, we find that emergency reclassification is not warranted because the species is already afforded protection under the ESA, protection under sections 7 and 9 would remain the same, recovery implementation would not be any different, and we have recently applied cautious management to ensure that irreversible impacts from fisheries interactions do not occur (NMFS 2001). Therefore, we conclude there will be no

significant risk to the species as a whole during the normal listing process.

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA and the implementing regulations at 50 CFR 424.11(c), a species can be reclassified, based on the best scientific and commercial data available after conducting a review of the species' status, for any one or a combination of the following: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence.

Information Solicited

To ensure that the status review is completed and based on the best available data, we are soliciting information and comments on whether the Northern and Florida Panhandle loggerhead subpopulations qualify as distinct population segments and, if so, whether they should be reclassified from threatened to endangered based on the above listing factors. Specifically, we are soliciting information in the following areas: (1) Historical and current abundance for these nesting assemblages; (2) current distribution and movement; (3) population status and trends; (4) genetic stock identification; (5) current or planned activities that may adversely impact these subpopulations; and (6) ongoing efforts to protect the Northern and Florida Panhandle subpopulations and their habitat. We request that all data, information, and comments be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications.

All submissions must contain the submitter's name, address, and any association, institution, or business that the person represents. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES**).

Critical Habitat

We are also requesting information on areas that may qualify as critical habitat for the loggerhead particularly related to the Northern and Florida Panhandle subpopulations. Areas that include the physical and biological features essential to the conservation of the species should be identified. Areas outside the present range should also be identified if such areas are essential to the conservation of the species. Essential features include, but are not limited to: (1) Space for individual growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and development of offspring; and (5) habitats that are protected from disturbance or are representative of the historical, geographical and ecological distributions of the species (50 CFR 424.12).

Peer Review

For listings, delistings, and reclassifications under the ESA, NMFS and the U.S. Fish and Wildlife Service have a joint policy for peer review of the scientific data (59 FR 34270, July 1, 1994). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. We are soliciting the names of recognized experts in the field that could take part in the peer review process for the loggerhead status review. Independent peer reviewers will be selected from the academic and scientific community, applicable tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

References Cited

Ehrhart, L.M. 1979. A survey of marine turtle nesting at Kennedy Space Center, Cape Canaveral Air Force Station, North Brevard County, Florida, 1-122. Unpublished report to Division of Marine Resources, St. Petersburg, Florida, Fla. Dept. Nat. Res.

Francisco, A.M., A.L. Bass, K.A. Bjorndal, A.B. Bolten, R. Reardon, M. Lamont, Y. Anderson, J. Foote, and B.W. Bowen. 2000. Stock structure and nesting site fidelity in Florida loggerhead turtles (*Caretta caretta*) resolved with mtDNA sequences. Unpublished Manuscript. Department of Fisheries and Aquatic Sciences, University of Florida, Gainesville, 23pp.

LeBuff, C.R., Jr. 1990. The loggerhead turtle in the eastern Gulf of Mexico. Caretta Research, Inc., Sanibel, FL, 216 pp.

Márquez-M., R. 1990. FAO Species Catalogue, Vol. 11. Sea turtles of the world, an annotated and illustrated catalogue of sea turtle species known to date. FAO Fisheries Synopsis, 125, 81 pp.

NMFS Biological Opinion, Reinitiation of Consultation on the Atlantic Highly Migratory Species Fisheries Management Plan and Its Associated Fisheries, June 8, 2001 pp: 167.

NMFS Southeast Fisheries Science Center. 2001. Stock assessments of loggerhead and leatherback sea turtles and an assessment of the impact of the pelagic longline fishery on the loggerhead and leatherback sea turtles of the Western North Atlantic. U.S. Department of Commerce, National Marine Fisheries Service, Miami, FL, SEFSC Contribution PRD-00/01-08; Parts I–III and Appendices I–V1.

Turtle Expert Working Group. 1998. (Byles, R., C. Caillouet, D. Crouse, L. Crowder, S. Epperly, W. Gabriel, B. Gallaway, M. Harris, T. Henwood, S. Heppell, R. Marquez-M, S. Murphy, W. Teas, N. Thompson, and B. Witherington). An Assessment of the Kemp's ridley (*Lepidochelys kempii*) and loggerhead (*Caretta caretta*) sea turtle populations in the Western North Atlantic. U.S. Dep. Commer. NOAA Tech. Mem. NMFS-SEFSC-409, 96 pp.

Turtle Expert Working Group. 2000. Assessment update for the Kemp's ridley and loggerhead sea turtle populations in the Western North Atlantic. U.S. Dep. Commer. NOAA Tech. Mem. NMFS-SEFSC-444, 115 pp.

Authority: 16 U.S.C. 1531 et seq.

Dated: May 30, 2002.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–13959 Filed 6–3–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 107
Tuesday, June 4, 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

Bureau for Democracy, Conflict and Humanitarian Assistance, Office of Food for Peace; Announcement of Draft Pub. L. 480 Title II Guidelines for FY 2004 Development Assistance Programs

Notice

Pursuant to the Agricultural Trade Development and Assistance Act of 1954 (Public Law 480, as amended), notice is hereby given that the Pub. L. 480 Title II Guidelines for FY 2004 Development Assistance Programs are being made available to interested parties for the required thirty (30) day comment period.

Individuals who wish to receive a copy of these draft guidelines should contact: Office of Food for Peace, Agency for International Development, RRB 7.06–153, 1300 Pennsylvania Avenue, Washington, DC 20523–7600. Individuals who have questions or comments on the draft guidelines should contact Angelique M. Crumbly at the above address or at (202) 712–4279.

The thirty-day comment period will begin on the date that this announcement is published in the **Federal Register**.

Dated: May 28, 2002.

Lauren Landis,

Director, Office of Food for Peace, Bureau for Democracy, Conflict and Humanitarian Assistance.

[FR Doc. 02–13858 Filed 6–3–02; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 29, 2002.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: 7 CFR 1965–A, Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases.

OMB Control Number: 056–0158.

Summary of Collection: The Farm Service Agency's (FSA) Farm Loan Program (FLP) provides supervised credit in the form of loans to family farmers and ranchers to purchase land and finance agricultural production. This regulation is promulgated to implement selected provisions of sections 331 and 335 of the Consolidated Farm and Rural Development Act. Section 331 authorizes the Secretary of Agriculture to grant releases from personal liability where security property is transferred to approved applicants, to permits partial releases and subordinations of mortgages subject to certain conditions, and to consents to leases of security and transfers of security property. Section 335 provides servicing authority for real estate security, operation or lease or realty, disposition of surplus property, conveyance of complete interest of the United States, easement, and condemnation.

Need and Use of the Information: Information is usually provided through the use of several forms that relates to a program benefit recipient or land borrower requesting action on security that they own, purchased and improved with FSA loan funds or otherwise mortgaged to the Agency to secure a government loan. The Farm Loan Program uses this regulation to prescribes policies and procedures for servicing real estate, leaseholds, and certain note-only security for FSA farm loans. Servicing will be carried out in accordance with the security instruments and related agreements, including any authorized modifications, provided the borrower has: (a) A reasonable prospect of accomplishing the loan objectives, (b) properly maintains and accounts for the security, and (c) otherwise meets the loan obligation.

Description of Respondents: Farms; Individuals or households; Business or other for-profit.

Number of Respondents: 14,080.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 6,753.

Animal and Plant Health Inspection Service

Title: Phytosanitary Export Certification.

OMB Control Number: 0579–0052.

Summary of Collection: The United States Department of Agriculture (USDA), Animal & Plant Health Inspection Service (APHIS) is responsible for preventing plant diseases, spread of pests not widely distributed in the United States and insect pests from entering the United States, and when feasible eradicating those imported pests. APHIS provides export certification services to assure other countries that the plants and plant products they are receiving from the United States are free of prohibited (or

regulated) plant diseases and insect pests.

Need and Use of the Information: APHIS will use the information collected to locate shipments, guide inspection, and issue a certificate to meet the requirements of the importing country. Lack of the information would make it impossible for APHIS to issue a phytosanitary certificate to meet the importing country's requirements.

Description of Respondents: Business or other for-profit; Farm; Individual or households; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 16,437.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 539,681.

Agricultural Marketing Service

Title: Tobacco Reports.

OMB Control Number: 0581–0004.

Summary of Collection: The authority for the collection of information on form TB–26, Tobacco Stocks Report, is Public Law No. 661, known as the Tobacco Statistics Act (7 U.S.C. 501–508) enacted in 1929. The Act directs the Secretary of Agriculture to collect statistics on the quantities of leaf tobacco held by dealers and manufacturers in the United States and Puerto Rico. The TB–26, Tobacco Stocks Report, provides information on the total supply of un-manufactured tobacco available to domestic manufacturers and is used to calculate the amount consumed in manufactured tobacco products.

Need and Use of the Information: The data collected is used by the Agricultural Marketing staff to monitor the size, growth, or decline of the market and is required for the calculation of production quotas for individual types of tobacco under the Agricultural Adjustment Act of 1938. Without the information, the Department would not be able to provide marketing information as directed by the Act.

Description of Respondents: Business or other for-profit.

Number of Respondents: 76.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 278.

Agricultural Marketing Service

Title: Almonds Grown in California, Marketing Order 981.

OMB Control Number: 0581–0071.

Summary of Collection: Marketing Order 981 (CFR Part 981), regulates the handling of almonds grown in California and emanates from enabling legislation the Agricultural Marketing Agreement Act of 1937 (Secs. 1–19, 48 Stats. 31, as amended; 7 U.S.C. 601–674). This legislation was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to growers. The Order authorizes the issuance of quality and volume control regulations, the establishment of production and marketing research, as well as inspection and reporting requirements. California accounts for all of the U.S. almond production, approximately 70% of which is exported.

Need and Use of the Information: Information is collected from various forms and reviewed by the Board. These forms are convenient for people who are required to file information with the Board relating to almond supplies, shipments, dispositions, and other information needed to effectively carry out the purposes of the Act and the Order. The information collected is used for publishing of industry statistics, program compliance, to determine industry support for programs or changes and determine qualifications.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 7,150.

Frequency of Responses: Recordkeeping; Reporting: On occasion, Monthly, Other.

Total Burden Hours: 2,638.

Agricultural Marketing Service

Title: National Research, Promotion, and Consumer Information Programs.

OMB Control Number: 0581–0093.

Summary of Collection: In the Federal Agricultural Improvement and Reform Act of 1996 (Public Law 104–127, signed April 4, 1996), Congress authorized the Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. 7401–7425; hereinafter, referred to as the Act. This Act authorizes the establishment and operation of generic promotion programs, which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments, and designed to maintain or expand markets and uses for U.S. produced commodities. The American Farm Bureau Federation, working in cooperation with 20 states and regional peanut industry organizations representing the 9 major peanut-producing states, has required the establishment of a Peanut Promotion, Research, and Information Order (Order) pursuant to the Act. The Peanut Program will be financed through assessments on peanut producers and will be administered by a 10-member National Peanut Board (Board) appointed by the Secretary of Agriculture for nominations submitted by the peanut industry.

Need and Use of the Information: Agricultural Marketing Service will collect information on the monthly detailed listing of each handler's transactions and the name of applicant, mailing address (handler and producer(s)), name and address of business or operation (handler), telephone number, facsimile number, identification number (collecting handler), period of report, date of last report, and date of application. The Board needs the information on the report to (1) comply with section 517 of the Act and (2) provide the necessary accounting documentation for assessment collection during the monthly reporting period.

Description of Respondents: Business or other for-profit; Farm; Federal Government.

Number of Respondents: 344,342.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 368,514.

Agricultural Marketing Service

Title: Regulations Governing the Voluntary Grading of Shell Eggs.

OMB Control Number: 0581–0128.

Summary of Collection: The Agricultural Marketing Act (AMA) of 1946 (60 Stat. 1087–1091, as amended; 7 U.S.C. 1621–1627) directs and authorizes the Department to develop standards of quality, grades, grading programs, and services to enable a more orderly marketing of agricultural products so trading may be facilitated and so consumers may be able to obtain products graded and identified under United States Department of Agriculture programs. The Agricultural Marketing Service (AMS) carries out regulations that provide a voluntary program for grading shell eggs on the basis of U.S. standards, grades, and weight classes. In addition, the shell egg industry and users of the products have requested that other types of voluntary services be developed and provided under these regulations. This program is voluntary where respondents would need to request or apply for the specific service they wish.

Need and Use of the Information: Authorized representatives of the Department of Agriculture use the information to administer, conduct and carry out the grading services requested by the respondents. If the information were not collected, the agency would not be able to provide the voluntary grading service authorized and

requested by Congress, provide the types of services requested by industry, administer the program, ensure properly grade-labeled products, calculate the cost of the service or collect for the cost furnishing service.

Description of Respondents: Business or other for profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 625.

Frequency of Responses: Reporting: On occasion; Semi-annually; Monthly; Annually; Other (daily).

Total Burden Hours: 5,608.

Animal and Plant Health Inspection Service

Title: Poultry and Pork Products Transiting the United States.

OMB Control Number: 0579–0145.

Summary of Collection: The United States Department of Agriculture (USDA), Animal & Plant Health Inspection Service (APHIS) is responsible for controlling and eliminating domestic animal diseases such as brucellosis and scrapie, as well as preventing the introduction of exotic animal diseases such as hog cholera, exotic Newcastle disease (END) and other foreign diseases. Title 21, United States Code (U.S.C.) authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g, which permits the Secretary of Agriculture to take these actions. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the United States' ability to compete in exporting animals and animal products. APHIS has determined that fresh pork and pork products, as well as poultry carcasses, parts and products from Mexican States can transit the United States with minimal risk of introducing hog cholera or END. By allowing these products from certain Mexican States to transit the United States necessitates the use of several activities, which include the completion of an import permit application, the placement of serial numbered seals on product containers, and the forwarding of a written, pre-arrival notification to APHIS port personnel.

Need and Use of the Information: APHIS will collect information to ensure that these products and parts from Mexico pose a negligible risk of introducing hog cholera and END into the United States. APHIS will also collect the name, address of the exporter, the origin and destination points of entry, the date of transportation, the method and route of shipment, the time and date the items are expected to arrive at the port, how long the items are expected to be in the United States, the permit number of the shipment, and the serial numbers of the seals on the shipment containers. If the information is not collected, it would make disease incursion event much more likely, with potentially devastating affects on the U.S. swine and poultry industries.

Description of Respondents: Business or other for-profit; Farm; Individual or households; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 25.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 572.

Food and Nutrition Service

Title: WIC Financial Management and Participation Report with Addendum.

OMB Control Number: 0584–0045.

Summary of Collection: The Women, Infants and Children Program (WIC) is authorized by Section 17 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1786), as amended. The Food and Nutrition Service (FNS) of USDA administers the WIC Program by awarding cash grants to State agencies. The State agencies award subgrants to local agencies to deliver program benefits and services to eligible participants. State agencies complete the FNS–798 to comply with two separate legislative requirements. FNS has added a new data element, migrant participation to the FNS–798. Migrant participation refers to the average number of migrant farm-worker household members who participated in the WIC Program during the most recent 12-month period beginning in July and ending in June. FNS must continue to collect migrant participation data annually to comply with section 17(g)(4) of the Child Nutrition Act (CAN) of 1966 (42 U.S.C. 1786, as amended).

FNS uses FNS–798–A addendum to determine if each State agency has met its statutory nutrition education and breastfeeding promotion and support minimum expenditure requirements.

Need and Use of the Information: FNS will use the information reported each month for program monitoring, funds allocation and management, budget projections, monitoring caseload, policy development, and responding to requests from Congress and the interested public. FNS also uses the data to determine if the State has met the 97 percent performance standard for food and 10 percent performance standard for Nutrition Services Administration. FNS will use migrant participation data to monitor the success of efforts to provide WIC services to migrant populations, and to project a minimum funding amount that State agencies might expect to expend for this purpose based on the prior year's experience.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 88.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 4,638.

Animal and Plant Health Inspection Service

Title: Domestic Quarantines.

OMB Control Number: 0579–0088.

Summary of Collection: Chapter 8 of the Plant Quarantine Act (U.S.C. 161) provides authority for the Secretary of Agriculture to quarantine any State, Territory, or District of the United States to prevent the spread of insect infestation and diseases new to or not widely distributed throughout the United States. The Domestic Quarantines (7 CFR Part 301) are issued under this authority. Implementing these quarantines often requires us to collect information from a variety of individuals who are involved in growing, packing, handling, transporting, and exporting of plants and plant products. The information collected from these individuals is vital to helping ensure that injurious plant diseases and insect pests do not spread within the United States. Information to be collected is necessary to determine compliance with domestic quarantines. Federal/State domestic quarantines are necessary to regulate the movement of articles from infested areas to noninfested area. Collecting information requires the use of a number of forms and documents. The Animal and Plant Health Inspection Service (APHIS) will collect information using various forms and documents.

Need and Use of the Information: APHIS will collect information by interviewing growers and shippers at the time the inspections are being conducted and by having growers and shippers of exported plants and plant products complete an application for a transit permit. Information is collected from the growers, packers, shippers, and exporters of regulated articles to ensure that the articles, when moved from a quarantined area, do not harbor injurious plant diseases and insect pests. The information obtained will be used to determine compliance with regulations and for issuance of forms, permits, certificates, and other required documents.

Description of Respondents: Business or other for-profit; Farm; Individuals or households; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 180,000.
Frequency of Responses: Recordkeeping; Reporting: On occasion.
Total Burden Hours: 87,647.

Food and Nutrition Service

Title: Nutrition Education for Food & Nutrition Service Population Groups.
OMB Control Number: 0584–NEW.
Summary of Collection: Diet has a significant impact on the health of citizen and is linked to four leading causes of disease, which can reduce the quality of life and cause premature death. While these diet-related problems affect all Americans, they have a greater impact on the disadvantaged populations reached by many of the Food and Nutrition Service Programs (FNS). One of FNS' goals includes improving the nutrition of children and low-income families by providing access to program benefits and nutrition education in a manner that supports American agriculture and inspires public confidence. The information collection is based on the Children Nutrition Act of 1966, as amended, the National School Lunch Act of 1966, as amended, the Food Stamp Act of 1977, as amended, the Agriculture and Consumer Protection Act of 1973, as amended, and the Emergency Food Assistance Act of 1983, as amended. The Eat Smart Play Hard (ESPH) Campaign is a multi-phase nutrition education and promotion program geared particularly towards children, including their caregivers, who are eligible for FNS nutrition assistance programs. Phase I of the ESPH will consist of a spokes character with accompanying posters, brochures, activity sheets, and a kit of promotional materials. For Phase II of ESPH Campaign, FNS will develop additional messages and materials for a subsection of children and caregivers group, an interactive children's Internet Web site, and convert existing English education materials to appropriate language and culture for Hispanic audiences. FNS will also develop nutrition education and promotion materials for mothers with 2–18-year-old children in low-literacy and Spanish-speaking population. The educational materials and promotional vehicles will serve as an important means to formulate and relay behavioral and motivational messages encompassed by the Dietary Guidelines for Americans.
Need and Use of the Information: FNS will collect information through interviews or written responses. The information collected will provide FNS with formative input and feedback on how best to reach and motivate preschool and school-age children, caregivers, Hispanic audiences as well as low-literacy groups to make changes consistent with the new Dietary Guidelines for Americans. FNS will also use the information collected to develop program materials to motivate the target audience to change their nutrition and physical activity-related behavior.
Description of Respondents: Individuals or households; Federal Government; State, Local, or Tribal Government.
Number of Respondents: 6,192.
Frequency of Responses: Reporting: Other (one-time).
Total Burden Hours: 3,538.

Agricultural Marketing Service

Title: California Prune/Plum Tree Removal Program—Section 32—Final Rule.
OMB Control Number: 0581–0201.
Summary of Collection: The authority to implement the California Prune/Plum Diversion Program or ''tree pull'' is established under (3) Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) (''Section 32''). The Prune Diversion Program is administered under the supervision of the Agriculture Marketing Service. The Prune Marketing Committee (PMC) is the agency responsible for locally administering the Federal Marketing Order for California prunes. Requirements of this program apply only to those growers who voluntarily participate in the tree removal program. The information provided by the participants is essential to carry out the program and to administer release of payments.
Need and Use of the Information: To meet program requirements, producers are required to fill out two forms, FV–298, Application for Prune Tree Removal Program, and FV–299, Tree Removal Notice and Verification Form. Form FV–298 collects information on the producer, the person completing the application, the number of trees to be removed, acreage, and past production. Form FV–299 provides PMC with the number of trees the producer agrees to remove. AMS and PMC use the information gathered from these forms to determine payment calculation and certify participation in the program.
Description of Respondents: Business or other for-profit; Farms.
Number of Respondents: 481.
Frequency of Responses: Recordkeeping; Reporting: Annually.
Total Burden Hours: 250.

Agricultural Marketing Service

Title: Vidalia Onions grown in Georgia, M.O. No. 955.
OMB Control Number: 0581–NEW.
Summary of Collection: Marketing Order No. 955 (7 CFR Part 955) covers the handling of Vidalia onions grown in Georgia. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The changes in the order for reporting requirements would allow the Committee to obtain shipment reports from handlers on a weekly basis rather than monthly and would increase the amount of information requested. These changes would provide the Committee with an earlier indication of problems with late compliance, thus reducing the problems currently experienced with late reporting.
Need and Use of the Information: The handlers will use FV–181, ''Vidalia Onion Handlers Report Form,'' to inform the Committee of their weekly receipts and shipments of Vidalia onions during the season. The Committee will use the information to ensure compliance with order regulations and assist in oversight and planning. Only authorized representatives of USDA will use the information. Without the handler reports, the Committee would not be able to collect assessments and provide for daily oversight of the order's operation.
Description of Respondents: Business or other for-profit; Farms.
Number of Respondents; 109.
Frequency of Responses: Recordkeeping; Reporting: Weekly.
Total Burden Hours: 136.

Sondra A. Blakey,
Departmental Information Collection Clearance Officer.
[FR Doc. 02–13874 Filed 6–3–02; 8:45 am]
BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–127–1]

Availability of a Study on Systems Approaches to Mitigating Plant Pest Risk

AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Notice and request for comments.

SUMMARY: We are advising the public that the National Plant Board, at the request of the Animal and Plant Health Inspection Service, has prepared a study on the role for and application of systems approaches designed to guard against the introduction of plant pathogens into the United States on imported plants and associated

products. We are making this study available to the public for review and comment.

DATES: We will consider all comments that we receive on or before August 5, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–127–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–127–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–127–1'' on the subject line.

A copy of the study and any comments that we receive on it may be reviewed in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Alan K. Dowdy, Associate Director, Center for Plant Health Science and Technology, PPQ, APHIS, 1017 Main Campus Drive, Suite 2500, Raleigh, NC 27606; (919) 513–2400.

SUPPLEMENTARY INFORMATION: Title IV of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224), known as the Plant Protection Act (7 U.S.C. 7701 through 7772, referred to below as the Act), incorporated preexisting plant quarantine and related statutes into a comprehensive law aimed at, among other things, clarifying and augmenting the Secretary's authority to detect, control, and eradicate plant pests and noxious weeds.

Section 412(e) of the Act directs the Secretary of Agriculture to conduct a study of the role for and application of systems approaches designed to guard against the introduction of plant pathogens into the United States on imported plants and associated products. A systems approach is defined in the Act as a defined set of phytosanitary procedures, at least two of which have an independent effect in mitigating pest risk associated with the movement of commodities.

To conduct the study required by § 412(e) of the Act, the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) entered into a cooperative agreement with the National Plant Board (NPB), an organization of the plant pest regulatory agencies of each of the States and the Commonwealth of Puerto Rico, to carry out the study. The agreement directed the NPB to coordinate the project, to conduct the actual research, to prepare a report of the findings, and to provide overall leadership to participating scientists from State departments of agriculture, colleges and universities, the private sector, and the Agricultural Research Service of the USDA.

The NPB has now given its final draft to APHIS. Before the Department presents its report on the results of this study to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives, as required by the Act, APHIS is making the study available to the public for review and comment.

The study makes the finding that ''systems approaches are both scientifically and theoretically sound.'' In addition, the study notes that in every case in which a systems approach has been applied to date, it has ''facilitated trade and concurrently thwarted the introduction and establishment of unwanted plant pathogens.''

The study recommends that APHIS use the process of systems engineering when developing systems approaches for importations of plants or plant products. Systems engineering has seven steps: Requirements development, concept development, full-scale engineering, system development, system test, system operation, and retirement and replacement.

The first step, requirements development, involves defining the problem as the customer sees it; this is the critical step for stakeholder input. The study also recommends that APHIS strengthen its monitoring and verification of systems approaches.

We invite your comments on the study. Please consider the following questions in your comments:

- What are the implications you see for import markets if we accept the NPB's recommendations?
- What are the implications you see for export markets if we accept the NPB's recommendations?
- Do you believe that there would be value in having APHIS use the systems engineering process recommended in the study to develop and evaluate a systems approach for a plant or plant product you wanted to import into the United States?
- Are there particular disadvantages to the use of a systems engineering process which would militate against its adoption?
- What are options for improved verification and monitoring of systems approaches?
- Are there other relevant issues that need to be addressed that are not discussed in the study?

The study is available in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice) or on the Internet at *http://www.aphis.usda.gov/ppq/.* You may also request that a copy be mailed to you by registering at http://www.aphis.usda.gov/ppq/ or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT:** If you request that a copy be mailed to you, please specify whether you desire a printed copy or a copy on compact disk.

Authority: 7 U.S.C. 7701–7772.

Done in Washington, DC, this 29th day of May, 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–13921 Filed 6–3–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Economic Research Service

National Agricultural Statistics Service

DEPARTMENT OF COMMERCE

Census Bureau

Bureau of Economic Analysis

DEPARTMENT OF EDUCATION

DEPARTMENT OF ENERGY

Energy Information Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

DEPARTMENT OF JUSTICE

DEPARTMENT OF LABOR

Bureau of Labor Statistics

NATIONAL SCIENCE FOUNDATION

SOCIAL SECURITY ADMINISTRATION

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Federal Statistical Organizations' Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information

AGENCIES: Economic Research Service (ERS) and National Agricultural Statistics Service (NASS), Department of Agriculture (USDA); U.S. Census Bureau (Census) and Bureau of Economic Analysis (BEA), Department of Commerce (DOC); National Center for Education Statistics (NCES), Department of Education (Education); Energy Information Administration (EIA), Department of Energy (DOE); National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS); Bureau of Justice Statistics (BJS), Department of Justice (DOJ); Bureau of Labor Statistics (BLS), Department of Labor (DOL); Division of Science Resources Statistics (SRS), National Science Foundation (NSF); Office of Research, Evaluation, and Statistics (ORES), Social Security Administration (SSA); Bureau of Transportation Statistics (BTS), Department of Transportation (DOT); Statistics of Income Division (SOI), Internal Revenue Service (IRS), Department of the Treasury (Treasury).

ACTION: Notice.

SUMMARY: Principal Federal statistical organizations are jointly announcing the opportunity to comment on their respective proposed guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of disseminated information. The statistical organizations' quality guidelines are each being developed to be responsive to Office of Management and Budget (OMB) issued government-wide guidelines at 67 FR 8452–8460 (February 22, 2002) and are intended to be included as part of the response from the Department or agency in which the statistical organization is located. Departments and agencies are required to issue their own implementing guidelines, including correction procedures, and to make the guidelines available on their individual Web Sites. Some basic features of how the Nation's principal statistical organizations will be responsive to the OMB guidelines are presented in the Supplementary Information section of this notice. This notice also serves to announce the availability of each organization's draft guidelines and related information (see Section II of Supplementary Information).

A statistical agency or unit, as defined in the **Federal Register** June 27, 1997(62 FR 35043–35050), is an agency or organizational unit of the Executive Branch whose activities are predominantly the collection, compilation, processing or analysis of information for statistical purposes. The above list of statistical organizations consists of the principal statistical agencies and other statistical organizational units belonging to the Interagency Council on Statistical Policy. Statistical organizations have long been leaders in the activities that are being required under the OMB guidelines. It should be noted that each organization will prepare its final guidelines in conjunction with its respective Department or agency.

The Office of Management and Budget recognizes that Federal statistical organizations provide a substantial variety of data. Accordingly, it is understood that the OMB guidelines cannot be implemented in the same way by each organization. In some cases, for example, the data disseminated by an organization are not collected by that organization at a particular point in time; rather, the information the organization must disseminate in a timely manner is compiled from a variety of sources (including surveys, administrative records, and other sources) that are constantly updated and revised and are generally confidential. While organizations' implementation of the guidelines may differ, the essence of the guidelines will apply. That is, these organizations must make their methods transparent by providing documentation, ensure quality by reviewing methods and consulting with experts and users, and inform users about corrections and revisions.

Each organization will take comments received into account, and will prepare its final guidelines in conjunction with its respective Department or agency for submission to OMB by August 1, 2002.

DATES: The dates for submission of comments to the statistical organizations vary. Comments on a specific organization's draft guidelines must be filed by the date provided at that organization's Web Site as listed below in Section II of **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Comments concerning an individual statistical organization's guidelines should be sent to that organization's representative as noted below in Section II of the Supplementary Information. To ensure receipt of the comments by the due date, submission by FAX or e-mail is recommended.

FOR FURTHER INFORMATION CONTACT: Copies of the draft guidelines for individual organizations are at the organizations' Web Sites listed below in Section II of Supplementary Information, along with information on a contact person for each organization.

SUPPLEMENTARY INFORMATION:

I. Background
II. Statistical Organization Actions, Web Sites, and Representatives
III. Agency/Department Process to Respond to Comments

I. Background

Federal statistics play a key role in a broad range of public policy, business, and individual decisions. Federal statistical surveys and compilations of administrative data are extensive undertakings that involve the collection of detailed information, often from large numbers of entities.

The principal functions of Federal statistical organizations generally include the compilation, analysis, and the dissemination of information, although the actual mix of functions varies by organization. Federal statistical organizations seek to maintain

their independence in the production of their statistics; the confidentiality of information provided by respondents; and high quality standards. These features foster credibility with data users and trust among data providers. The heads of the Nation's principal statistical agencies (ERS, NASS, BEA, Census, NCES, EIA, NCHS, BJS, BLS, and BTS) plus the heads of the statistical units in the IRS, NSF, and SSA, serve on the Interagency Council on Statistical Policy (ICSP) which is led by OMB. The ICSP coordinates statistical work across organizations, enables the exchange of information about organization programs and activities, and provides advice and counsel to OMB on statistical activities.

High quality publicly available statistics from Federal statistical organizations are essential for the nation to advance the economic well-being and quality of life of its people. OMB guidelines for the quality, objectivity, utility, and integrity of information disseminated by Federal agencies are encompassed by the statistical organizations' requirements that the statistics produced must be accurate, timely, relevant, and accessible to data users. The statistics should also be reproducible, meaning that there is the capability to use the documented methods on the same data set to achieve a consistent result.

Statistical organizations, as defined above, maintain the quality of their data or information products as well as their credibility by setting high standards of performance in their activities. Such activities generally include:

- Development of concepts and methods;
- Planning and design of surveys and other means of collecting data;
- Collection of data;
- Processing and editing of data;
- Analysis of data;
- Production of estimates or projections;
- Establishment of review procedures; and
- Dissemination of data by published reports, electronic files and other media requested by users.

Statistical organizations undertake these activities in substantially different proportions, and not all statistical organizations engage in each of these activities.

A statistical organization's commitment to quality and professional standards of practice further includes: the use of modern statistical theory and practice in all technical work; the development of strong staff expertise in the disciplines relevant to its mission; the implementation of ongoing quality assurance programs to improve data validity and reliability and to improve the processes of compiling, editing, and analyzing data; and the development of a strong and continuing relationship with appropriate professional organizations in the fields of statistics and relevant subject-matter areas.

To carry out its mission, a Federal statistical organization assumes responsibility for determining sources of data, measurement methods, methods of data collection and processing while minimizing respondent burden; employing appropriate methods of analysis; and ensuring the public availability of the data and documentation of the methods used to obtain the data. Within the constraints of resource availability, a statistical organization continually works to improve its data systems to provide information necessary for the formulation of public policy.

In striving for the widest possible dissemination and greatest usefulness of its data, a statistical organization establishes a publications policy that addresses the types of reports and other data releases, including electronic, to be made available; the frequency and timeliness of such releases; the variety of avenues for data dissemination and formats; and policies for the preservation of data. A statistical organization seeks advice on specific data concepts, methods, and products from data users and from other professional and technical subject-matter and methodological experts. When applicable, a statistical organization seeks advice on its statistical program as a whole, including the setting of statistical priorities and on the statistical methodologies it uses. The organization strives to meet the needs for access to data while maintaining appropriate safeguards for the confidentiality of individual responses.

In accordance with the OMB guidelines, each agency will establish mechanisms providing the public with the opportunity to seek correction of information that does not comply with OMB or agency guidelines. Those mechanisms are addressed in more detail on the Web Sites listed below in Section II of Supplementary Information.

II. Statistical Organization Actions, Web Sites, and Representatives

According to OMB's guidelines, an agency designated in OMB Circular A–130 must publish a notice of availability of its draft quality guidelines in the **Federal Register** and post the draft guidelines on the its Web Site to provide an opportunity for public comment. The statistical organizations participating in this **Federal Register** notice are listed below. As noted above, many statistical organizations will also be formally covered by the quality guidelines of their parent Department or agency, and those draft guidelines are also available for review.

The statistical organizations listed below are requesting comments on the quality guidelines that each has developed for its disseminated information.

The Web Site addresses present each organization's draft guidelines on which the organization is requesting public comments. Also included is the organization's contact person for more information and who should receive any comments. To ensure receipt of the comments by the due date indicated on an agency's Web Site, submission by FAX or e-mail is recommended.

- BEA—The proposed quality guidelines are available at *www.bea.gov/.* For additional information or to comment on the agency's guidelines, contact Stephen Andrews. Mr. Andrews may be contacted by telephone at (202) 606–9653, FAX at (202) 606–5313, or e-mail at *ocs@bea.gov.* His mailing address is Bureau of Economic Analysis, BE–40, 1441 L Street, N.W., Washington, DC 20230.
- BLS—The proposed quality guidelines are available at *www.bls.gov/BLS/Quality.htm.* For additional information or to comment on the agency's guidelines, contact Deborah Klein. Ms. Klein may be contacted by telephone at (202) 691–5900, FAX at (202) 691–5899, or e-mail at *DataQa@bls.gov.* Her mailing address is Bureau of Labor Statistics, 2 Massachusetts Avenue, N.E., Washington, DC 20212.
- BJS—The proposed quality guidelines are available at *www.ojp.usdoj.gov/bjs/whtsnw2.htm.* For additional information or to comment on the agency's guidelines, contact Pete Brien. Mr. Brien may be contacted by telephone at (202) 305–0643, FAX at (202) 307–5846, or e-mail at *askbjs@ojp.usdoj.gov.* His mailing address is Bureau of Justice Statistics, 810 7th St, NW, Washington, DC 20531.
- BTS—The proposed quality guidelines are available at *www.bts.gov/statpol/.* For additional information on the agency's guidelines, contact Eugene Burns. Dr. Burns may be contacted by telephone at (202) 366–3491, FAX at (202) 366–3640, or e-mail at *eugene.burns@bts.gov.* His mailing address is Office of Statistical Quality (K–24), Bureau of Transportation Statistics, 400 Seventh Street, S.W., Washington, DC 20590. To comment on

the agency's guidelines, send your comments to the U. S. Department of Transportation, Docket Management System (DMS). You may submit your comments by fax, Internet, in person, or via the U.S. mail to the Docket Clerk, Docket No. OST–2002–11996, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590–0001. Comments should identify the DOT docket number. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, persons should consider an alternative method (the Internet, fax, or professional delivery service) to submit comments. You may fax your comments to the DMS at (202) 493–2251. If you wish to file comments using the Internet, you may use the DOT DMS Web Site at *http://dms.dot.gov/.* Please follow the online instructions for submitting an electronic comment.

• Census—The proposed quality guidelines are available at *www.census.gov/.* For additional information or to comment on the agency's guidelines, contact Cynthia Clark. Dr. Clark may be contacted by telephone at (301) 457–2160, FAX at (301) 457–1902, or e-mail at *quality@census.gov.* Her mailing address is Associate Director for Methodology and Standards, U.S. Census Bureau, Washington, DC 20233–9000.

• EIA—The proposed quality guidelines are available at *www.eia.doe.gov/neic/aboutEIA/aboutus.htm.* For additional information or to comment on the agency's guidelines, contact Jay Casselberry. Mr. Casselberry may be contacted by telephone at (202) 287–1717, FAX at (202) 287–1705, or e-mail at *Jay.Casselberry@eia.doe.gov.* His mailing address is Statistics and Methods Group (EI–70), Energy Information Administration, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585–0670.

• ERS—The proposed quality guidelines are available at *www.ers.usda.gov/.* For additional information or to comment on the agency's guidelines, contact Phil Fulton. Dr. Fulton may be contacted by telephone at (202) 694–5000, FAX at (202) 694–5757, or e-mail at *pfulton@ers.usda.gov.* His mailing address is Economic Research Service, 1800 M Street, NW, Washington, DC 20036–5831.

• IRS/Statistics of Income Division—The quality guidelines for IRS Statistics of Income Division will be included in the final agency-wide guidelines. The IRS draft guidelines are available at *www.irs.gov/pub/irs-utl/data—quality—draft—guidelines.pdf.* For additional information or to comment on IRS's guidelines, contact Wayne Wiegand by telephone at (202) 927–4412, FAX at (202) 874–0922, e-mail at Wayne.E.Wiegand@irs.gov, or mail at Internal Revenue Service, 1111 Constitution Avenue NW, Room 3524, Washington DC 20224, ATTN: Wayne Wiegand.

• NASS—The proposed quality guidelines are available at *www.usda.gov/nass/.* For additional information or to comment on the agency's guidelines, contact Rich Allen. Mr. Allen may be contacted by telephone at (202) 720–4333, FAX at (202) 720–9013, or e-mail at *rallen@nass.usda.gov.* His mailing address is USDA–NASS, Room 4117 South Bldg., 1400 Independence Ave. S.W., Washington, DC 20250–2001.

• NCES—The proposed quality guidelines are available at *www.nces.ed.gov/statprog.* For additional information or to comment on the agency's guidelines, contact Marilyn McMillen Seastrom. Dr. Seastrom may be contacted by telephone at (202) 502–7303, FAX at (202) 502–1717, or email at *marilyn.mcmillen@ed.gov.* Her mailing address is NCES, Room 9051, 1990 K Street NW, Washington, DC 20006.

• NCHS—The proposed quality guidelines are available at *www.cdc.gov/nchs/.* For additional information or to comment on the agency's guidelines, contact Jennifer Madans. Dr. Madans may be contacted by telephone at 301–458–4500, FAX at (301) 458–4020, or e-mail at *JMadans@cdc.gov.* Her mailing address is National Center for Health Statistics, 6525 Belcrest Road, Room 1140, Hyattsville, MD 20782.

• NSF/Division of Science Resources Statistics—The proposed quality guidelines are available at *www.nsf.gov/sbe/srs/infoqual.htm.* For additional information or to comment on the division's guidelines, contact Jeri Mulrow. Ms. Mulrow may be contacted by telephone at (703) 292–4784, FAX at (703) 292–9092, or e-mail at *JMulrow@nsf.gov.* Her mailing address is Division of Science Resources Statistics, National Science Foundation, 4201 Wilson Blvd., Room 965, Arlington, VA 22230.

• SSA/Office of Research, Evaluation, and Statistics—The proposed quality guidelines are available at *http://www.ssa.gov/515/.* For additional information or to comment on SSA's guidelines, contact Brian Greenberg. Note that quality guidelines for SSA's statistical information products are included in agency-wide guidelines. Dr. Greenberg may be contacted by telephone at (410) 965–0131, FAX at (410) 965–3308, or e-mail at brian.v.greenberg@ssa.gov. His mailing address is Social Security Administration, Office of Research, Evaluation, and Statistics, Room 4C15, Operations Building, 6401 Security Blvd., Baltimore, MD 21235.

III. Agency/Department Process To Respond to Comments

Comments submitted to each individual organization in response to their notices will be summarized by them and/or may be included in their request for OMB approval of the organization's final quality guidelines. In any event, the submitted comments become a matter of public record.

Authorities: Sec. 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the Office of Management and Budget Final Guidelines issued on February 22, 2002 (67 FR 8452–8460).

Issued in Washington, D.C. May 29, 2002.

Susan E. Offutt,

Administrator, Economic Research Service, Department of Agriculture.

R. Ronald Bosecker,

Administrator, National Agricultural Statistics Service, Department of Agriculture.

C. Louis Kincannon,

Director, U.S. Census Bureau, Department of Commerce.

J. Steven Landefeld,

Director, Bureau of Economic Analysis, Department of Commerce.

Gary Phillips,

Deputy Commissioner, National Center for Education Statistics, Department of Education.

Mary J. Hutzler,

Acting Administrator, Energy Information Administration, Department of Energy.

Edward J. Sondik,

Director, National Center for Health Statistics, Centers for Disease Control and Prevention, Department of Health and Human Services.

Mr. Lawrence A. Greenfeld,

Acting Director, Bureau of Justice Statistics, Department of Justice.

Lois Orr,

Acting Commissioner, Bureau of Labor Statistics, Department of Labor.

Lynda T. Carlson,

Director, Division of Science Resources Statistics National Science Foundation.

Susan Grad,

Acting Associate Commissioner, Office of Research, Evaluation, and Statistics, Social Security Administration.

Ashish Sen,

Director, Bureau of Transportation Statistics, Department of Transportation.

Issued in Washington, DC May 7, 2002.

Thomas Petska,

Director, Statistics of Income Division, Internal Revenue Service, Department of Treasury.

[FR Doc. 02–13892 Filed 6–3–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after June 3, 2002. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Appeals and Litigation Group Leader; Northern Region; PO Box 7669; Missoula, Montana 59807. Phone: (406) 329–3696.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana:
The Missoulian, Great Falls Tribune, and The Billings Gazette.
Regional Forester decisions in Northern Idaho and Eastern Washington:
The Spokesman Review.
Regional Forester decisions in North Dakota:
Bismarck Tribune.
Regional Forester decisions in South Dakota:
Rapid City Journal.
Beaverhead/Deerlodge
Montana Standard
Bitterroot
Ravalli Republic
Clearwater
Lewiston Morning Tribune
Custer
Billings Gazette (Montana)
Rapid City Journal (South Dakota)
Dakota Prairie National Grasslands
Bismarck Tribune (North and South Dakota)
Flathead
Daily Inter Lake
Gallatin
Bozeman Chronicle
Helena
Independent Record
Idaho Panhandle
Spokesman Review
Kootenai
Daily Inter Lake
Lewis & Clark
Great Falls Tribune
Lolo
Missoulian
Nez Perce
Lewiston Morning Tribune

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: May 24, 2002.

Kathleen A. McAllister,

Deputy Regional Forester.

[FR Doc. 02–13881 Filed 6–3–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Survey of ITA Client Companies.

Agency Form Number: None.

OMB Number: None.

Type of Request: Emergency.

Burden Hours: 100.

Number of Respondents: 2,000.

Average Hours Per Response: 30 minutes.

Needs and Uses: The Department of Commerce's International Trade Administration (ITA) provides export promotion products to help U.S. firms operate in global markets. ITA's target audience for this assistance is the small to medium size firms. The Office of Management and Budget (OMB) has recently instructed the ITA in budget passback language to conduct a study of the elasticity of the costs for these products. The ''Survey of ITA Client Companies,'' collection of information will be used to: (1) Identify and gather pricing and cost data on ITA products and services; (2) gather information on fee structure, cost and key characteristics of customers; and (3) develop recommendations on pricing strategies.

Affected Public: Business or other for profit organizations, not-for-profit institutions.

Frequency: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & 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 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: May 29, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–13876 Filed 6–3–02; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

[I.D. 053002A]

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: NMFS Alaska Region Vessel Monitoring System (VMS) Program.

Form Number(s): None.

OMB Approval Number: 0648–0445.

Type of Request: Regular submission.

Burden Hours: 13,152.

Number of Respondents: 539.

Average Hours Per Response: 6 hours to install a VMS; 4 hours per year to maintain a VMS; 5 seconds for an automated position report; and 12 minutes to fax a check-in report; and 12 minutes to fax a reimbursement form.

Needs and Uses:

As required in the reasonable and prudent measures in the Endangered Species Act, Section 7 biological opinion on the effects of the Bering Sea and Aleutian Islands pollock, Atka mackerel, and Pacific cod fisheries on the endangered Steller sea lions, NMFS has implemented changes to information collected from fishery participants. Any vessel that is registered for directed fishing for Pacific cod, pollock, and Atka mackerel in the exclusive economic zone off Alaska must install a vessel monitoring system (VMS) unit and operate the VMS while directed fishing for each of the species. The VMS unit automatically transmits location information every 20 minutes. NOAA uses the information for determining vessel locations and enforcing the closure of areas of critical habitat. Participants must also fax NOAA a check-in report when a VMS unit has been installed. Participants may request reimbursement for the cost of the VMS transmitter.*Affected Public*: Business or other for-profit organizations.

Frequency: On occasion, every 20 minutes.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 29, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–13957 Filed 6–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 053002B]

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: NOAA Coastal Ocean Program Grants Proposal Application Package.

Form Number(s): None.

OMB Approval Number: 0648–0384.

Type of Request: Regular submission.

Burden Hours: 1,100.

Number of Respondents: 300.

Average Hours Per Response: 30 minutes for a budget form; 30 minutes for a project summary; 5 hours for an annual report; 10 hours for a final report; and 10 minutes to provide the extra copies required.

Needs and Uses: The Coastal Ocean Program (COP) provides direct financial assistance for the management of coastal ecosystems. Applicants for assistance are required to provide information in addition to the Standard Forms and grant application information. These additional requirements include a COP summary proposal budget form and a COP project summary. Applicants may also be required to provide up to 20 copies of their proposals. Successful applicants must file annual progress reports and a project final report in accordance with COP formats.

Affected Public: Not-for-profit institutions, individuals or households, and state, local, or tribal government.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain benefits.

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 29, 2002.

Gwellnar Banks

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–13958 Filed 6–3–02; 8:45 am]

BILLING CODE 3510–JS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Ohio and Georgia Coastal Nonpoint Pollution Control Programs: Conditional Approvals, Final Findings Documents and Records of Decision

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce (NOAA) and Environmental Protection Agency (EPA).

ACTION: Notice of conditional approval of Coastal Nonpoint Pollution Control Programs and availability of Final Findings Documents and Records of Decision for Ohio and Georgia.

SUMMARY: Notice is hereby given of the conditional approval of the Coastal Nonpoint Pollution Control Programs (coastal nonpoint programs) and of the availability of the Final Findings Documents and Records of Decision for Ohio and Georgia. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA) requires States and Territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs.

NOAA and EPA have approved, with conditions, the coastal nonpoint programs submitted by Ohio and Georgia. In order to receive final approval of their programs, Ohio and Georgia will need to meet the conditions within the associated timeframes as indicated in the Final Findings Documents.

DATES: The conditional approval of the coastal nonpoint pollution control programs for Ohio and Georgia is effective upon the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Copies of the Final Findings Documents and Records of Decision may be obtained upon request from:

John King, Acting Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East–West Highway, Silver Spring, Maryland, 20910, tel. 301–713–3155 extension 195, e-mail *john.king@noaa.gov;* or on the internet at: *http://www.ocrm.nos.noaa.gov/czm/6217/.*

FOR FURTHER INFORMATION CONTACT: Chris Rilling, NOAA, 301–713–3155 (x198); or Stacie Craddock, EPA, 202–566–1204.

SUPPLEMENTARY INFORMATION: NOAA and EPA have prepared a Findings Document for each coastal nonpoint program submitted for approval. The Findings Documents were prepared by NOAA and EPA to provide the rationale for the agencies' decision to apporove each State and Territory coastal nonpoint program. Proposed Findings Documents, Environmental Assessments, and Findings of No Significant Impact prepared for the coastal nonpoint programs submitted by Ohio and Georgia were made available for public comment in the **Federal Register** on September 28, 2001 (66 FR 49643). No public comments were received on the programs.

In accordance with the National Environmental Policy Act (NEPA), NOAA has also prepared a Record of Decision on each program. The Record of Decision: (1) States what the decision was; (2) identifies all alternatives considered, specifying the alternative considered to be environmentally preferable; and (3) states whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted.

In March 1996, NOAA published a programmatic environmental impact statement (PEIS) that assessed the environmental impacts associated with the approval of State and Territory coastal nonpoint programs. The PEIS forms the basis for the environmental assessments NOAA has prepared for each State and Territorial coastal nonpoint program submitted to NOAA and EPA for approval. In the PEIS, NOAA determined that the approval and conditional approval of coastal nonpoint programs will not result in any significant adverse environmental impacts and that these actions will have an overall beneficial effect on the environment. Because the PEIS served only as a ''framework for decision'' on individual State and Territorial coastal nonpoint programs, and no actual decision was made following its publication, NOAA has prepared a NEPA Record of Decision on each individual State and Territorial program submitted for review.

Dated: May 28, 2002.

Margaret A. Davidson,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Diane C. Regas,

Acting Assistant Administrator for Office of Water, Environmental Protection Agency.

[FR Doc. 02–13911 Filed 6–3–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052902D]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Ad Hoc Red Snapper Advisory Panel (AP) from June 17–19, 2002.

DATES: The Council's Ad Hoc Red Snapper AP will convene at 8:30 a.m. (CST) on Monday, June 17, 2002 and conclude by 5 p.m. on Wednesday, June 19, 2002.

ADDRESSES: The meeting will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL; telephone: 813–877–6688.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP will convene to discuss the issues related to and continue the development of an individual fishing quota (IFQ) profile for the commercial red snapper fishery. The profile will examine the benefits and consequences of using IFQs to manage the commercial red snapper fishery. When the profile is completed by the AP and Council, it will be submitted to the current participants in the fishery for a referendum to determine if the majority of the participants favor management by IFQs.

The AP members consist of commercial fishermen holding Class 1 or Class 2 commercial red snapper licenses, and licensed commercial reef fish dealers. They are assisted by 4 non-voting members with expertise in fishery economics, fishery biology, environmental science, and law enforcement. The completion of the profile will require several subsequent meetings of this AP.

Although other non-emergency issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act (Magnuson-Stevens Act), provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 10, 2002.

Dated: May 30, 2002.

Richard W. Surdi,

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

[FR Doc. 02–13954 Filed 6–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052902E]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Shrimp Stock Assessment Panel (SSAP) from June 17–19, 2002.

DATES: The Council's SSAP will convene at 1:30 p.m. (CST) on Monday, June 17, 2002 and conclude by 3 p.m. on Wednesday, June 19, 2002.

ADDRESSES: The meeting will be held at the New Orleans Airport Hilton Hotel, 109 Airline Highway, Kenner,LA; telephone: 504–469–5000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Council will convene its SSAP to review an Options Paper for Amendment 13 to the Shrimp Fishery Management Plan (FMP) that contains alternatives for defining maximum sustainable yield (MSY), optimum yield (OY), overfishing and the overfished condition for shrimp stocks in the Gulf of Mexico. The SSAP may also consider these parameters for rock shrimp that are currently not part of the management unit of the Shrimp FMP; however, the Council will be considering adding this stock to the Shrimp FMP. Finally, the SSAP may consider a bycatch quota for the shrimp fishery and what impacts it may have on shrimp and bycatch stocks, particularly red snapper.

Although other non-emergency issues not on the agenda may come before the SSAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the SSAP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 10, 2002.

Dated: May 30, 2002.

Richard W. Surdi,

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

[FR Doc. 02–13955 Filed 6–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052302C]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Committee in June, 2002. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will held on Wednesday, June 19, 2002, at 9:30 a.m. and on Thursday, June 20 at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will consider methods for minimizing the effects of monkfish fishing on essential fish habitat. The agenda will include discussion of other Monkfish Amendment 2 issues, possible discussions of Scallop Amendment 10 and Groundfish Amendment 13 issues as they relate to essential fish habitat. The committee will also discuss modeling efforts for potential closed areas or areas of focus. There will be a presentation of the proposed Nova Scotia to New York City pipeline project by the project consultant.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice, that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 29, 2002.

Richard W. Surdi,

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

[FR Doc. 02–13951 Filed 6–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052302D]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Recreational Advisory Panel in June, 2002. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Tuesday, June 18, 2002 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Advisory Panel will develop recommendations for the Council with respect to the general strategy and overall policy issues facing recreational (including party/charter) fishermen in fisheries managed by the New England Fishery Management Council. The Panel will also discuss the ongoing development of Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP), and may develop preliminary recommendations for recreational management measures. They will consider these suggested measures and will develop recommendations that will be reviewed by the Council at a later date. After Council approval, the measures will be

analyzed and included in a Draft Supplemental Environmental Impact Statement (DSEIS).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 24, 2002.

Richard W. Surdi,

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

[FR Doc. 02–13952 Filed 6–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052902C]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet June 16-21, 2002. The Council meeting will begin on Tuesday, June 18, at 8 a.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 8 a.m. until 9:30 a.m. on Tuesday, June 18 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings and hearing will be held at the Crowne Plaza Hotel, 1221 Chess Drive, Foster City, CA 94404; telephone: 650–570–5700.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97266.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: 503–820–2280 (as of May 15, 2002).

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks, Introductions,
2. Roll Call
3. Executive Director's Report
4. Approve Agenda
5. Approve March and April 2002 Meeting Minutes

B. Administrative Matters

1. Appointments to Advisory Bodies
2. Council Staff Work Load Priorities
3. September 2002 Council Meeting Draft Agenda

C. Groundfish Management

1. NMFS Report on Groundfish Management
2. Stock Assessments for Bocaccio, Canary Rockfish, and Sablefish
3. Rebuilding Analyses for Bocaccio, Canary Rockfish, Yelloweye Rockfish, Widow Rockfish, and Whiting
4. Preliminary Harvest Levels and Other Specifications for 2003
5. Adoption of Draft Rebuilding Plans for Public Review for Pacific Ocean Perch, Lingcod, Cowcod, Widow Rockfish, and Darkblotched Rockfish
6. Fishery Management Plan (FMP) Programmatic Environmental Impact Statement
7. Draft Amendment 17 (Multi-Year) Management
8. Proposed Management Measures for 2003
9. Status of Fisheries and Inseason Adjustments
10. Groundfish Stock Assessment Priorities for 2003
11. Scoping for Delegation of Nearshore Management Authority

D. Highly Migratory Species Management

1. NMFS Report on Highly Migratory Species (HMS) Management
2. HMS Draft FMP Development

E. Habitat Issues

Essential Fish Habitat Issues

F. Marine Reserves

1. Review of Proposal for Marine Reserves in State Waters of the Channel Islands National Marine Sanctuary
2. Update on Other Marine Reserves Processes

G. Coastal Pelagic Species Management

1. NMFS Report on Coastal Pelagic Species (CPS) Management
2. Amendment 10 to the CPS FMP
3. Pacific Mackerel Stock Assessment and Harvest Guideline

SCHEDULE OF ANCILLARY MEETINGS

SUNDAY, June 16, 2002	
Groundfish Advisory Subpanel	1 p.m.
Groundfish Management Team	1 p.m.
Scientific and Statistical Committee	1 p.m.
MONDAY, June 17, 2002	
Council Secretariat	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Habitat Committee	8 a.m.
Scientific and Statistical Committee	8 a.m.
Legislative Committee	10 a.m.
Budget Committee	1 p.m.
TUESDAY, June 18, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Habitat Committee	8 a.m.

SCHEDULE OF ANCILLARY MEETINGS—Continued

Highly Migratory Species Advisory Subpanel	8 a.m.
Scientific and Statistical	8 a.m.
Enforcement Consultants	Immediately following Council Session
WEDNESDAY, June 19, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Coastal Pelagic Species Advisory Subpanel	10 a.m.
Advisory Subpanel Enforcement Consultants	As necessary
THURSDAY, June 20, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Coastal Pelagic Species Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Enforcement Consultants	As necessary
FRIDAY, June 21, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As necessary

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 30, 2002.

Richard W. Surdi,

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

[FR Doc. 02–13953 Filed 6–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–28]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–28 with attached transmittal, policy justification, and Sensitivity of Technology.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

17 MAY 2002
In reply refer to:
I-02/005888

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-28, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $155 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-28

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Egypt**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$136 million
Other	$ 19 million
TOTAL	$155 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: upgrade of six (6) CH-47C CHINOOK helicopters to the newer CH-47D configuration, spare and repair parts, support equipment, publications and technical data, communications equipment, maintenance, personnel training and training equipment, U.S. Government Quality Assurance Team, contractor representatives, contractor engineering and technical support services, preparation of aircraft for shipment, and other related elements of logistics support**

(iv) **Military Department: Army (UUW)**

(v) **Prior Related Cases, if any:**
FMS case JBK - $113 million - 22Jan98
FMS case JBN - $114 million - 01Dec99

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.**

(viii) **Date Report Delivered to Congress: 17 MAY 2002**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Egypt - Upgrade of CH-47C to CH-47D CHINOOK Helicopters

The Government of Egypt has requested a possible upgrade of six CH-47C CHINOOK helicopters to the newer CH-47D configuration, spare and repair parts, support equipment, publications and technical data, communications equipment, maintenance, personnel training and training equipment, U.S. Government Quality Assurance Team, contractor representatives, contractor engineering and technical support services, preparation of aircraft for shipment, and other related elements of logistics support. The estimated cost is $155 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The Egyptian Armed Forces will use these helicopters for troop transport and logistics support. They may also be deployed in future joint exercises with the United States such as Operation Bright Star.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be The Boeing Company of Philadelphia, Pennsylvania. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require a U.S. contractor representative for up to two years and four additional U.S. contractor representatives for one week when the aircraft arrives. Up to eight U.S. Government Quality Assurance personnel will be required for one week following delivery of the helicopters in Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-28

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The CH-47 CHINOOK Helicopter includes the following classified or sensitive components:

a. Radar Warning Receiver AN/APR-39A(V)3 - provides warning of a radar directed air defense threat to permit appropriate countermeasures. It is programmed with threat data provided by the purchasing country. Hardware is classified Confidential. Technical manuals for the maintenance levels are classified Confidential. Reverse engineering is not a major concern.

b. Laser Detecting Set AN/AVR-2A - is a passive laser warning system which receives, processes and displays threat information results from other aircraft illuminators, laser range finders or laser guided weapons. Hardware is classified Confidential. Reverse engineering is not a major concern.

c. Missile Approach Detector AN/ALQ-156(V)1 - is an airborne radar system, which provides infrared homing protection to the aircraft by detecting the approach of an anti-aircraft missile. Hardware is classified Confidential. Reverse engineering is not a major concern.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–13895 Filed 6–3–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

National Imagery and Mapping Agency

Privacy Act of 1974; System of Records

AGENCY: National Imagery and Mapping Agency, DoD.

ACTION: Notice to delete and alter a system of records.

SUMMARY: The National Imagery and Mapping Agency (NIMA) is deleting one notice and altering another 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.

The alteration consolidates two existing NIMA systems of records into one system (B0210–07, entitled ''Inspector General Investigative and Complaint Files'') and proposes to exempt B0210–07 by adding a (k)(2) and (k)(5) exemption. The exemptions will increase the value of the system of records for law enforcement purposes, and will protect the privacy of individuals identified in the system of records.

DATES: This proposed action will be effective without further notice on July 5, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Avenue, Bethesda, MD 20816–5003.

FOR FURTHER INFORMATION CONTACT: Ms. Christine May on (301) 227–4142.

SUPPLEMENTARY INFORMATION: The National Imagery and Mapping Agency 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 proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 23, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 29, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

B0210–06

SYSTEM NAME:

Inspector General Investigative Files (February 22, 1993, 58 FR 10189).

Reason: These records have been consolidated into the NIMA system of records B0210–07, entitled ''Inspector General Investigative and Complaint Files''.

Alteration

B0210–07

SYSTEM NAME:

Inspector General Complaint Files (February 22, 1993, 58 FR 10189).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Inspector General Investigative and Complaint Files'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Any individual who has registered a complaint, allegation or query with the NIMA Inspector General (IG) or is the subject of a NIMA IG investigation.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Investigative/complaint files, inquiries or investigative reports pertaining to complaints, allegations of fraud, waste, abuse, mismanagement, malfeasance, or reprisal as procedures pertaining to NIMA personnel, procedures, policies or programs. Files may contain Reports of Investigation, sworn testimony, letters, memorandums and working papers regarding developed or obtained as a result of investigation or complaint wherein someone has made allegations of violations involving fraud, waste, abuse, mismanagement, reprisal, denial of due process pertaining to NIMA personnel, programs, policies and/or procedures developed or obtained as a result of the investigation or complaint.

Letters/transcriptions of complaints, allegations and queries; letters of appointment; reports of reviews, inquiries and investigations with supporting attachments, exhibits and photographs; record of interviews; witness statements; reports of legal review of case files, congressional responses; memoranda; letters and reports of findings and actions taken; letters to complainants and subjects of investigations; letters of rebuttal from subjects of investigations; finance; personnel; administration; adverse information, and technical reports.'

PURPOSE(S):

Delete entry and replace with 'To analyze and evaluate the effectiveness and efficiency of NIMA policies, programs, procedures, activities and operations; to detect and prevent fraud, waste and abuse; to resolve complaints and inquiries; to initiate proper corrective action if the allegation is proven to be true in fact; to be used as basis for corrective actions.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'By individual's last name and Social Security Number.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Disposition pending (until NARA has approved the retention and disposition schedule for these records, treat as permanent).'

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with '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 identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigative 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 system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 320. For additional information contact the system manager.'

* * * * *

B0210–07

SYSTEM NAME:

Inspector General Investigative and Complaint Files.

SYSTEM LOCATION:

National Imagery and Mapping Agency, Office of the Inspector General, 4600 Sangamore Road, IG (D–34), Bethesda, MD 20816–5003.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who has registered a complaint, allegation or query with the NIMA Inspector General (IG) or is the subject of a NIMA IG investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative/complaint files, inquiries or investigative reports pertaining to complaints, allegations of fraud, waste, abuse, mismanagement, malfeasance, or reprisal as procedures pertaining to NIMA personnel, procedures, policies or programs. Files may contain Reports of Investigation, sworn testimony, letters, memorandums and working papers regarding developed or obtained as a result of investigation or complaint wherein someone has made allegations of violations involving fraud, waste, abuse, mismanagement, reprisal, denial of due process pertaining to NIMA personnel, programs, policies and/or procedures developed or obtained as a result of the investigation or complaint.

Letters/transcriptions of complaints, allegations and queries; letters of appointment; reports of reviews, inquiries and investigations with supporting attachments, exhibits and photographs; record of interviews; witness statements; reports of legal review of case files, congressional responses; memoranda; letters and reports of findings and actions taken; letters to complainants and subjects of

investigations; letters of rebuttal from subjects of investigations; finance; personnel; administration; adverse information, and technical reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Directive 5105.60, National Imagery and Mapping Agency; NIMA Policy Directive 7400.1R1, Oversight and Assessment; NIMA Instruction 7410.8R1, Inspector General Investigations and Complaints; and E.O. 9397 (SSN).

PURPOSE(S):

To analyze and evaluate the effectiveness and efficiency of NIMA policies, programs, procedures, activities and operations; to detect and prevent fraud, waste and abuse; to resolve complaints and inquiries; to initiate proper corrective action if the allegation is proven to be true in fact; to be used as basis for corrective actions.

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 DMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and on electronic media.

RETRIEVABILITY:

By individual's last name and Social Security Number.

SAFEGUARDS:

Paper records are stored in file folders and secured in cabinets located in the Inspector General records vault. The electronic files are maintained on a secure server. Access is limited to the Inspector General and investigative staff assigned to the Inspector General's office, requiring restricted user name and password access.

RETENTION AND DISPOSAL:

Disposition pending (until NARA has approved the retention and disposition schedule for these records, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General, Policy, Oversight and Investigations, National Imagery and Mapping Agency, Office of Inspector General, 4600 Sangamore Road, IG (D–34), Bethesda, MD 20816–5003.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves contained in this system of records should address written inquiries to National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mailstop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, Social Security Number, current address and home telephone number, office code (if available), and investigative case file number (if known).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mailstop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, Social Security Number, current address and home telephone number, office code (if available), and investigative case file number (if known).

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Source of Inspector General Investigation and Complaint files are letters, memorandums or documents received by NIMA Inspector General staff from military, civilian, or other sources.

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 identity of a confidential source. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigative 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 system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 320. For additional information contact the system manager.

[FR Doc. 02–13897 Filed 6–3–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Draft Deputy Secretary of Defense Policy Memorandum, Subject: Ensuring the Quality of Information Disseminated by the Department of Defense

AGENCY: Assistant Secretary of Defense for Command, Control, Communication, and Intelligence, DoD.

ACTION: Notice of availability; extension of comment period.

SUMMARY: On Tuesday, April 30, 2002, the Department of Defense published in the **Federal Register** (67 FR 21229) a notice of availability on its draft policies for ensuring the quality of information disseminated by the Department of Defense. The draft Policy Memorandum is available on the Assistant Secretary of Defense for Command, Control, and Communications, and Intelligence (ASD(C3I)) public Web site located at *http://www.c3i.osd.mil/org/cio/index.html.* That notice provided a public comment period ending May 30, 2002. This notice is being published to announce the extension of the public comment period until July 1, 2002.

DATES: Consideration will be give to all comments received on or before July 1, 2002.

ADDRESSES: Submit comments to Ellen Law, OASD(C3I), Office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence/Chief Information Officer,

6000 Defense Pentagon, Washington, DC 20301–6000.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Law, OASD(C3I), 703–602–0980 Ext. 121, *Ellen.law@osd.mil.*

Dated: May 31, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–14024 Filed 5–31–02; 11:48 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Commitee is publishing Civilian Personnel Per Diem Bulletin Number 224. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 224 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: June 1, 2002.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 223. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: May 29, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 224 UPDATES RATES FOR FOOTLOOSE, KOTZEBUE, HOMER AND UMIAT ALASKA; AND HAWAII.				
ALASKA				
ANCHORAGE [INCL NAV RES]				
05/01 - 09/15	161	85	246	05/01/2002
09/16 - 04/30	85	77	162	05/01/2002
BARROW	159	95	254	05/01/2002
BETHEL	129	66	195	05/01/2002
CLEAR AB	80	55	135	09/01/2001
COLD BAY	90	73	163	05/01/2002
COLDFOOT	135	71	206	10/01/1999
COPPER CENTER	99	63	162	05/01/2002
CORDOVA	105	89	194	05/01/2002
CRAIG	75	57	132	05/01/2002
DEADHORSE	95	67	162	05/01/2002
DELTA JUNCTION	79	58	137	05/01/2002
DENALI NATIONAL PARK				
06/01 - 08/31	125	66	191	09/01/2001
09/01 - 05/31	90	63	153	09/01/2001
DILLINGHAM	95	69	164	05/01/2002
DUTCH HARBOR-UNALASKA	120	78	198	05/01/2002
EARECKSON AIR STATION	80	55	135	09/01/2001
EIELSON AFB				
05/01 - 09/15	149	78	227	05/01/2002
09/16 - 04/30	75	70	145	05/01/2002
ELMENDORF AFB				
05/01 - 09/15	161	85	246	05/01/2002
09/16 - 04/30	85	77	162	05/01/2002
FAIRBANKS				
05/01 - 09/15	149	78	227	05/01/2002
09/16 - 04/30	75	70	145	05/01/2002
FOOTLOOSE	175	18	193	06/01/2002
FT. GREELY	79	58	137	05/01/2002
FT. RICHARDSON				
05/01 - 09/15	161	85	246	05/01/2002
09/16 - 04/30	85	77	162	05/01/2002
FT. WAINWRIGHT				
05/01 - 09/15	149	78	227	05/01/2002
09/16 - 04/30	75	70	145	05/01/2002
GLENNALLEN				
05/01 - 09/30	137	61	198	09/01/2001
10/01 - 04/30	89	56	145	09/01/2001
HEALY				
06/01 - 08/31	125	66	191	09/01/2001
09/01 - 05/31	90	63	153	09/01/2001
HOMER				
05/15 - 09/15	109	76	185	06/01/2002
09/16 - 05/14	76	72	148	06/01/2002
JUNEAU	119	83	202	05/01/2002

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KAKTOVIK	165	86	251	05/01/2002
KAVIK CAMP	150	69	219	05/01/2002
KENAI-SOLDOTNA				
04/01 - 10/31	95	76	171	05/01/2002
11/01 - 03/31	60	71	131	05/01/2002
KENNICOTT	159	77	236	05/01/2002
KETCHIKAN				
05/01 - 09/30	130	80	210	05/01/2002
10/01 - 04/30	100	80	180	05/01/2002
KING SALMON				
05/01 - 10/01	225	91	316	05/01/2002
10/02 - 04/30	125	81	206	05/01/2002
KLAWOCK	75	57	132	05/01/2002
KODIAK	105	81	186	05/01/2002
KOTZEBUE				
05/01 - 08/31	167	99	266	06/01/2002
09/01 - 04/30	136	96	232	06/01/2002
KULIS AGS				
05/01 - 09/15	161	85	246	05/01/2002
09/16 - 04/30	85	77	162	05/01/2002
MCCARTHY	159	77	236	05/01/2002
METLAKATLA				
05/30 - 10/01	98	48	146	05/01/2002
10/02 - 05/29	78	47	125	05/01/2002
MURPHY DOME				
05/01 - 09/15	149	78	227	05/01/2002
09/16 - 04/30	75	70	145	05/01/2002
NOME	89	64	153	09/01/2001
NUIQSUT	180	53	233	05/01/2002
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PORT ALSWORTH	135	88	223	05/01/2002
PRUDHOE BAY	95	67	162	05/01/2002
SEWARD				
05/31 - 09/30	179	58	237	05/01/2002
10/01 - 05/30	79	53	132	05/01/2002
SITKA-MT. EDGECUMBE				
05/16 - 09/16	159	98	257	05/01/2002
09/17 - 05/15	139	97	236	05/01/2002
SKAGWAY				
05/01 - 09/30	130	80	210	05/01/2002
10/01 - 04/30	100	80	180	05/01/2002
SPRUCE CAPE	105	81	186	05/01/2002
TANANA	89	64	153	09/01/2001
UMIAT	200	20	220	05/01/2002
VALDEZ				
05/01 - 10/01	124	71	195	05/01/2002
10/02 - 04/30	69	66	135	05/01/2002
WAINWRIGHT	120	83	203	05/01/2002
WASILLA	95	60	155	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
WRANGELL				
05/01 - 09/30	130	80	210	05/01/2002
10/01 - 04/30	100	80	180	05/01/2002
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	55	135	09/01/2001
AMERICAN SAMOA				
AMERICAN SAMOA	85	67	152	03/01/2000
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	69	204	11/01/2001
HAWAII				
CAMP H M SMITH	112	72	184	06/01/2002
EASTPAC NAVAL COMP TELE AREA	112	72	184	06/01/2002
FT. DERUSSEY	112	72	184	06/01/2002
FT. SHAFTER	112	72	184	06/01/2002
HICKAM AFB	112	72	184	06/01/2002
HONOLULU (INCL NAV & MC RES CTR)	112	72	184	06/01/2002
ISLE OF HAWAII: HILO	189	69	258	06/01/2002
ISLE OF HAWAII: OTHER	89	54	143	05/01/2000
ISLE OF KAUAI				
05/01 - 11/30	158	88	246	06/01/2002
12/01 - 04/30	203	93	296	06/01/2002
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	159	89	248	06/01/2002
ISLE OF OAHU	112	72	184	06/01/2002
KEKAHA PACIFIC MISSILE RANGE FAC				
05/01 - 11/30	158	88	246	06/01/2002
12/01 - 04/30	203	93	296	06/01/2002
KILAUEA MILITARY CAMP	189	69	258	06/01/2002
LUALUALEI NAVAL MAGAZINE	112	72	184	06/01/2002
MCB HAWAII	112	72	184	06/01/2002
NAS BARBERS POINT	112	72	184	06/01/2002
PEARL HARBOR [INCL ALL MILITARY]	112	72	184	06/01/2002
SCHOFIELD BARRACKS	112	72	184	06/01/2002
WHEELER ARMY AIRFIELD	112	72	184	06/01/2002
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	0	14	14	05/01/2002
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	150	47	197	02/01/2000
NORTHERN MARIANA ISLANDS				
ROTA	149	72	221	04/01/2000
SAIPAN	150	88	238	11/01/2001
TINIAN	85	71	156	05/01/2002
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
CAROLINA				
04/11 - 12/23	155	71	226	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
12/24 - 04/10	195	75	270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82	54	136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
HUMACAO	82	54	136	01/01/2000
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	93	72	165	01/01/2000
12/15 - 04/14	129	76	205	01/01/2000
ST. JOHN				
04/15 - 12/14	219	84	303	01/01/2000
12/15 - 04/14	382	100	482	01/01/2000
ST. THOMAS				
04/15 - 12/14	163	73	236	01/01/2000
12/15 - 04/14	288	86	374	01/01/2000
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

[FR Doc. 02–13894 Filed 6–4–02; 8:45 am]
BILLING CODE 5001–08–C

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 Add a System of Records.

SUMMARY: The Department of the Air Force is proposing to add an exempt system of records to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The (k)(2) exemption is intended to increase the value of the system of records for law enforcement purposes.

DATES: This proposed action will be effective without further notice on July 5, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

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 proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 23, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 29, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F051 AF JA I

SYSTEM NAME:

Commander Directed Inquiries.

SYSTEM LOCATION:

Commander Directed Inquiries are maintained at the installation where the Commander's office is located.

Information copies of a report are kept at the individual's organization and at other organizations which have an interest in a particular incident or problem involving that individual that is addressed in the report. Official Air Force mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who are subjects of reviews, inquiries, or investigations conducted under the inherent authority of a commander or director. All persons who are subjects of administrative command actions for which another system of records is not applicable.

CATEGORIES OF RECORDS IN THE SYSTEM:

Commander-directed investigations; letters/transcriptions of complaints, allegations and queries; letters of appointment; reports of reviews, inquiries and investigations with supporting attachments, exhibits and photographs, record of interviews; witness statements; reports of legal review of case files, congressional responses; memoranda; letters and reports of findings and actions taken; letters to complainants and subjects of investigations; letters of rebuttal from subjects of investigations; finance, personnel; administration; adverse information, and technical reports; documentation of command action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 164, Commanders of Combatant Commands; Air Force Instruction 51–604, Appointment to and Assumption of Command; Inherent authority of commanders to investigate matters or incidents under their jurisdiction or command.

PURPOSE(S):

Used to ensure just, thorough, and timely resolution and response to complaints, allegations, or queries, and as a means of improving morale, welfare, good order, discipline, and efficiency of organizations, units, and personnel.

Portions of the inquiries or investigations may be used in evaluating an individual's overall performance and may be included in their military personnel records.

Documents received or prepared in anticipation of litigation are used by attorneys for the government to prepare for trials and hearings; to analyze evidence; to prepare for examination of witnesses; to prepare for argument before courts, magistrates, and investigating officers; and to advise commanders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE 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 governmental boards or agencies or health care professional societies or organizations if such record or document is needed to perform licensing or professional standards monitoring related to credentialed health care practitioners or licensed non-credentialed health care personnel who are or were members of the United States Air Force, and to medical institutions or organizations wherein such member has applied for or been granted authority or employment to provide health care services if such record or document is needed to assess the professional qualifications of such member.

To certifying and licensing bodies for professional certifications and accreditations not related to health care.

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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers, and on computer output and storage products.

RETRIEVABILITY:

Retrieved by subject's name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared based upon a need to know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Disposition pending (no records will be destroyed until authorized by the

National Archives and Records Administration).

SYSTEM MANAGER(S) AND ADDRESS:

The Commander who initiated an investigation or that Commander's successor in command, at that Commander's installation office. Official Air Force mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander who initiated the investigation, or that Commander's successor, at the Commander's installation office.

Individual should provide their full name, mailing address, and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address request to the Commander who initiated the investigation, or that Commander's successor in command, at the Commander's installation office.

Individual should provide their full name, mailing address, and Social Security Number.

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:

Complainants, subjects, investigations, witnesses, official records, third parties, and Members of Congress. Information from almost any source can be included if it is relevant and material to the investigation, inquiry, or subsequent command action.

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. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 02–13899 Filed 6–3–02; 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 add a system of records.

SUMMARY: The Defense Logistics Agency proposes to add a system of records notice to 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 July 5, 2002 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 proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 23, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 29, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.60 DMDC

SYSTEM NAME:

Archival Purchase Card File.

SYSTEM LOCATION:

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DoD military members and civilian purchasing agents who have been issued purchase cards for the procurement of supplies, equipment, and services for official business; all DoD military members and civilian personnel who were granted approving authorization.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes cardholder name, purchase card account number, billing address, work telephone number, and merchant data; approving official name, account number, work telephone number and work address; and account processing and management information, including purchase card transactions, purchase and credit limitations, and card cancellation status indictor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 2358, Research and Development Projects; and 10 U.S.C. 2784, Management of Credit Cards.

PURPOSE(S):

The purpose of the system of records is to provide a single central file of credit purchases within the Department of Defense to assess historical purchase card data.

For card recovery purposes, the system is used to identify former cardholders who failed to properly turn in cards. Data from the system is also provided to the Defense Finance and Accounting Service for reporting purchase card transactions to appropriate authorities. Statistical data is used by management for planning, evaluation, and program administration purposes.

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 DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes and disks.

RETRIEVABILITY:

Retrieved by name or purchase card account number.

SAFEGUARDS:

Access to personal information is restricted to those who require access to the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords that are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures. Employees are warned through screen log-on protocols and periodic briefings of the consequences of improper access or use.

RETENTION AND DISPOSAL:

Records are deleted 6 years and 3 months after final payment or when no longer needed, whichever is later.

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 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 used on the account and the account number.

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 used on the account and the account number.

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–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The military services, the Defense components, financial institutions, merchants, and cardholders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–13896 Filed 6–3–02; 8:45 am]

BILLING CODE 3820–08–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.351C]

Professional Development for Music Educators

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

Purpose of Program: The Professional Development for Music Educators program, authorized under Subpart 15 of Part D of Title V of the Elementary and Secondary Education Act (ESEA), as amended by Public Law 107–110, the No Child Left Behind Act of 2001, makes grants to eligible entities for the implementation of high-quality professional development programs in elementary and secondary education. This program will fund professional development model programs based upon innovative instructional methods, especially those linked to scientifically based research.

Eligible Applicants: A local educational agency (LEA), acting on behalf of an individual school or schools where 75 percent or more of the children are from low-income families, based on the poverty criteria described in Title I, Section 1113(a)(5) of the ESEA, in collaboration with at least one of the following: (1) An institution of higher education; (2) a State educational agency; or (3) a public or private non-profit agency with a history of providing high-quality professional development services to public schools. Only schools where 75 percent or more of the children served are from low-income families may receive services under this program. Each school served through this program must submit evidence that it meets the poverty criteria. Applicants may submit records kept for the purpose of Title I of the ESEA that demonstrate proof of eligibility for each school to be served.

Note: The LEA must serve as the fiscal agent for the program.

Applications Available: June 4, 2002.

Deadline for Transmittal of Applications: July 19, 2002.

Deadline for Intergovernmental Review: September 17, 2002.

Available Funds: approximately $2,000,000.

Estimated Number of Awards: 5–10.

Estimated Size of Awards: $200,000–$400,000.

Average size of Awards: $300,000.

Note: The Department is not bound by any estimates in this notice. Funding for the second and third years is subject to the availability of funds and the approval of continuation awards (34 CFR 75.253).

Project Period: up to 36 months.

General Requirements:

Page Limit Requirement: The program narrative is limited to no more than 40 pages. The page limit applies to the narrative section only, however, all of the application narrative must be included in the narrative section. If the narrative section of an application exceeds the page limitation, the application will not be reviewed. In addition, the following standards are required: (1) Each ''page'' is 8.5″ x 11″ (on one side only) with one inch margins (top, bottom, and sides); (2) double space (no more than three lines per vertical inch) all text in the application narrative including titles, headings, footnotes, quotations, and captions as well as all text in charts, tables, figures, and graphs; and (3) use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

Project Directors Meeting: Applicants are encouraged to budget for a two-day project directors meeting in Washington, DC.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99.

E-Mail Notification of Intent To Apply for Funding: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by e-mail that it intends to submit an application for funding. The Secretary requests that this e-mail

notification be sent no later than July 5, 2002. The e-mail notification should be sent to Ms. Madeline Baggett at *madeline.baggett@ed.gov*. Applicants that fail to provide this e-mail notification may still apply for funding.

Program Purposes and Goals: This program supports the strengthening of standards-based music education programs, which are an integral part of elementary and secondary school curriculums. It also helps ensure that all students meet challenging State academic content standards and challenging State student academic achievement standards in the arts. Professional development activities that are developed, enhanced, or expanded through this program will assist music teachers in the implementation of music education standards as well as the integration of music instruction into other subject areas.

Music content and achievement standards have been voluntarily adopted in many States throughout the country. Such standards help school districts to establish student performance standards based upon the unique needs of, and desired outcomes for, the students in their communities. The development and implementation of standards-based music programs enable music educators to assess and document the effectiveness of teaching strategies and materials in addition to student achievement. However, teachers often need professional development on how to implement music education standards for both music programs and programs designed to integrate music into other subject areas.

High-quality professional development programs supported under this program should be linked to the implementation of music standards and/or the integration of music into other content areas and should include: (1) Strategies for addressing student achievement; (2) strategies for increasing the needs of students who come from diverse cultural, linguistic, and socioeconomic backgrounds; (3) the development of intellectual and leadership potential of teachers; (4) rigorous and sustained activities that result in increased content area knowledge and classroom effectiveness of music teachers; (5) technological innovations relevant to music instruction; and (6) increased opportunities for teachers to share and discuss new methods or teaching strategies with their peers.

At the end of the project period, EDGAR (34 CFR 75.590) requires each grantee to submit a final program report. The Department intends to use information from the final report to determine which professional development programs have the greatest potential for improving teacher expertise in music education, and ultimately student performance in, music education. The Department plans to disseminate information regarding successful teaching methods or best practices that are developed or enhanced through this program to the music education community and to the public in general.

Waiver of Proposed Rulemaking: In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt rules governing the first competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). This competition is the first Music Educators program competition under the reauthorized Arts in Education program as amended by Public Law 107–110, the No Child Left Behind Act of 2001, and therefore qualifies for this exemption. The Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forego public comment in order to ensure timely grant awards. These rules will apply to the FY 2002 grant competition only.

Coordination Requirement: Under section 5551(f)(1) of the ESEA, the Secretary requires that each entity funded under this competition coordinate, to the extent practicable, each project or program carried out with such assistance with appropriate activities of public or private cultural agencies, institutions, and organizations, including museums, arts education associations, libraries, and theaters.

Supplement, Not Supplant, Requirement: Under section 5551(f)(2) of the authoring statute, the Secretary requires that assistance provided under this program be used only to supplement, and not to supplant, other assistance or funds made available from non-Federal sources for the activities assisted under this subpart.

Absolute Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute priority to professional development programs designed for K–12 music teachers that focus on: (1) The development, enhancement, or expansion of standards-based music education programs; or (2) the integration of music instruction into other subject area content. Funded projects will address and strive to achieve all aspects of high-quality professional development programs as described under the Program Purposes and Goals section.

Under 34 CFR 75.105(c)(3), the Secretary will fund under this competition only applicants that meet the absolute priority.

Selection Criteria: The Secretary will use the following selection criteria in 34 CFR 75.210 to evaluate applications under this competition. The maximum score for each criterion is 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion. The criteria are as follows:

(a) *Significance.* (15 points) The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project involves the development of promising new strategies that build on, or are alternatives to, existing strategies.

(ii) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(iii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(b) *Quality of the Project Design.* (20 points) The Secretary considers the quality of the project design of the proposed project. In determining the quality of the project design, the Secretary considers the following factors:

(i) The extent to which the proposed project represents an exceptional approach for meeting the priority established for the competition.

(ii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(iii) The quality of the methodology to be employed in the proposed project.

(c) *Quality of Project Services.* (20 points) The Secretary considers the quality of project services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project

reflect up-to-date knowledge from research and effective practices.

(ii) The extent to which the professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(d) *Quality of Project Personnel.* (10 points) The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been under-represented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director;

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(e) *Adequacy of Resources.* (10 points) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the lead applicant organization.

(ii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(iii) The potential for incorporation of project purposes, activities or benefits into the ongoing program of the agencies or organizations involved in the project at the end of Federal funding.

(f) *Quality of the Management Plan.* (10 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring continuous feedback and continuous improvement in the operation of the proposed project.

(iii) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(g) *Quality of the Project Evaluation.* (15 points) The Secretary considers the quality of the project evaluation. In determining the quality of the project evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(ii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

For Applications or Information Contact: Madeline E. Baggett, U.S. Department of Education, 400 Maryland Avenue, SW, FB–6, Room 3E228, Washington, DC 20202–6140. Telephone (202) 260–2502. Internet address: *Madeline.Baggett@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternative format also by contacting that person. However, the Department is not able to reproduce in an alternative format the standards forms included in the application package.

Electronic Access to this Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498, or in the Washington, DC area at 202–512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *Http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7271.

Dated: May 30, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–13984 Filed 6–3–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on the proposed revisions and three-year extension to the following Petroleum Supply Forms:

EIA–800, ''Weekly Refinery Report,''
EIA–801, ''Weekly Bulk Terminal Report,''
EIA–802, ''Weekly Product Pipeline Report,''
EIA–803, ''Weekly Crude Oil Stocks Report,''
EIA–804, ''Weekly Imports Report,''
EIA–810, ''Monthly Refinery Report,''
EIA–811, ''Monthly Bulk Terminal Report,''
EIA–812, ''Monthly Product Pipeline Report,''
EIA–813, ''Monthly Crude Oil Report,''
EIA–814, ''Monthly Imports Report,''
EIA–816, ''Monthly Natural Gas Liquids Report,''
EIA–817, ''Monthly Tanker and Barge Movement Report,''
EIA–819M, ''Monthly Oxygenate Telephone Report,'' and
EIA–820, ''Annual Refinery Report.''

DATES: Comments must be filed by August 5, 2002. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Stefanie Palumbo, Petroleum Division. To ensure receipt of the comments by the due date, submission by FAX (202–586–5846) or e-mail (*stefanie.palumbo@eia.doe.gov*) is recommended. The mailing address is Petroleum Division, EI–42, Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585. Alternatively, Stefanie Palumbo may be contacted by telephone at (202) 586–6866.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Stefanie Palumbo

at the address listed above. The proposed forms and changes in definitions and instructions are also available on the Internet at *http://www.eia.doe.gov/oil_gas/petroleum/survey_forms/pet_proposed_forms.html*

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 et seq.) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 et seq.) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

The weekly surveys (Forms EIA-800, EIA–801, EIA–802, EIA–803, and EIA–804) are designed to highlight information on petroleum refinery operations, inventory levels, and imports of selected petroleum products in a more timely manner. The information appears in the publications listed below and is also available electronically through the Internet at *http://www.eia.doe.gov/.*

Publications:

DOE/EIA–0208	Weekly Petroleum Status Report
DOE/EIA–0109	Petroleum Supply Monthly
DOE/EIA–0035	Monthly Energy Review
DOE/EIA–0202	Short-Term Energy Outlook
DOE/EIA–0383	Annual Energy Outlook
Internet only	This Week in Petroleum

The monthly surveys (Forms EIA–810, EIA–811, EIA–812, EIA–813, EIA–814, EIA–816, EIA–817 and EIA–819M) are designed to provide statistically reliable and comprehensive information not available from other sources to EIA, other Federal agencies, and the private sector for use in forecasting, policy making, planning, and analysis activities. The information appears in the publications listed below and is also available electronically through the Internet at *http://www.eia.doe.gov/.*

Publications:

DOE/EIA–0208	Weekly Petroleum Status Report
DOE/EIA–0109	Petroleum Supply Monthly
DOE/EIA–0340	Petroleum Supply Annual
DOE/EIA–0035	Monthly Energy Review
DOE/EIA–0384	Annual Energy Review
DOE/EIA–0202	Short-Term Energy Outlook
DOE/EIA–0383	Annual Energy Outlook

The annual survey (Form EIA–820) provides data on the operations of all operating and idle petroleum refineries (including new refineries under construction), blending plants, refineries shutdown with useable storage capacity, and refineries shutdown during the previous year. The information appears in the Petroleum Supply Annual (DOE/EIA–0340) and is also available electronically through the Internet at *http://www.eia.doe.gov/.*

II. Current Actions

The EIA will request a 3-year extension of the collection authority for each of the above-referenced surveys except for the Form EIA–807. The Form EIA–807 will be eliminated. Additionally, as a means of improving its petroleum supply surveys to reflect the changing regulations and industry, the EIA proposes the following changes for the 2003 and 2004 collection periods.

- 2003 Survey Changes
- Add product detail for Non-Fuel Propylene, Ethylene, and Refinery Butane
- Add Propane/Propylene to weekly surveys (eliminate EIA–807 survey)
- Collect RBOB (Reformulated Gasoline Blendstock for Oxygenate Blending) as a separate item under gasoline blending components
- Add a gasoline blending section to bulk terminal reports (Forms EIA–801 and EIA–811)
- Modify oxygenate survey EIA–819 to eliminate redundant inventory reporting and capture production of gasoline blending components
- Add a natural gas activity section to the natural gas liquids report EIA–816
- 2004 Survey Changes
- Add finished gasoline product detail
- Modify distillate fuel oil sulfur levels
- Collect product detail for unfinished oils input and production
- Modify reporting categories for hydrocracking and hydrotreating capacity
- Eliminate naphtha-type jet fuel as a separate product

Specific changes to each of the forms are outlined below:

2003 Changes Proposed by EIA

Change the title of the Form EIA–800 from ''Weekly Refinery Report'' to ''Weekly Refinery and Fractionator Report.''

Collect three additional products for Form EIA–800 (Weekly Refinery and Fractionator Report), Form EIA–802 (Weekly Product Pipeline Report), and Form EIA–804 (Weekly Imports Report).

- Propane/propylene,
- Reformulated (including RBOB) blending components, and
- All other motor gasoline blending components.

Collect four additional products in the bulk terminal stocks section (Section A) of Form EIA–801 (Weekly Bulk Terminal Report). The products are:

- Reformulated (including RBOB) blending components,
- All other motor gasoline blending components,
- Propane/propylene, and
- Propylene (nonfuel use).

Add a new section for gasoline blending (Section B) to the Form EIA–801 (Weekly Bulk Terminal Report). Data for inputs and/or production of the following products will be collected in the new gasoline blending section:

- Reformulated (including RBOB) blending components (inputs),
- All other motor gasoline blending components (inputs),
- Oxygenates, natural gas plant liquids, and liquefied refinery gases (inputs), and
- Finished motor gasoline in the categories:

—Reformulated (inputs and production),
—Oxygenated (inputs and production), and
—Other finished (inputs and production).

Collect three additional products for Form EIA–810 (Monthly Refinery Report), Form EIA–812 (Monthly Product Pipeline Report), and Form EIA–814 (Monthly Imports Report).

- All other oxygenates (methanol, TAME (tertiary amyl methyl ether), TBA (tertiary butyl alcohol), and other oxygenates),
- Reformulated (including RBOB) blending components, and
- All other motor gasoline blending components.

Collect six additional products in the bulk terminal stocks section (Section A)

of Form EIA–811 (Monthly Bulk Terminal Report). The products are:

- Reformulated (including RBOB) blending components,
- All other motor gasoline blending components,
- Ethylene,
- Propylene (nonfuel use),
- Refinery-grade butane, and
- All other oxygenates (methanol, TAME, TBA, and other oxygenates).

Add a new section for gasoline blending (Section B) to the Form EIA–811. Data for inputs and/or production of the following products will be collected in the new gasoline blending section:

- Reformulated (including RBOB) blending components (inputs and production),
- All other motor gasoline blending components (inputs and production),
- Oxygenates (inputs) in the categories:

—Fuel Ethanol (FE),
—Ethyl Tertiary Butyl Ether (ETBE),
—Methyl Tertiary Butyl Ether (MTBE), and
—All other oxygenates (methanol, TAME, TBA, and other oxygenates).

- Natural gas plant liquids, and liquefied refinery gases (inputs) in the categories:

—Normal butane,
—Isobutane, and
—Pentanes plus.

- Finished motor gasoline (inputs and production) in the categories:

—Reformulated,
—Oxygenated, and
—Other finished.

Add a new section for natural gas activity (Part 2) to the Form EIA–816 (Monthly Natural Gas Liquids Report). Quantities of the following will be collected:

- Volume of natural gas received during the month,
- Volume of natural gas consumed as fuel at the facility for all purposes, and
- Volume of natural gas shipments during the month.

Collect two additional products for Form EIA–817 (Monthly Tanker and Barge Movement Report):

- Reformulated (including RBOB) blending components, and
- All other motor gasoline blending components.

Form EIA–819M (Monthly Oxygenate Telephone Report) modifications include:

- Change the number of the Form EIA–819M to Form EIA–819.
- Change filing and publication dates for monthly oxygenate data to match petroleum supply surveys (i.e., change filing date from 7 working days after the end of each report month to 20 calendar days after the end of each report month).
- Change the publication date from 15 working days after the end of each report month to approximately 52 days after the end of each report month.
- Eliminate reporting on Form EIA–819 by bulk terminal and pipeline operators. (This eliminates duplicate reporting of stocks on Form EIA–819 and Forms EIA–811 or Form EIA–812. The EIA–819 will survey merchant and captive oxygenate producers exclusively.)
- Discontinue reporting stocks at captive MTBE plants. This eliminates duplicate reporting of stocks on Form EIA–819 and Form EIA–810.
- Report production of motor gasoline blending components. (This change is needed to capture new gasoline blending components production from merchant MTBE plants that have converted to alkylation plants. Without this change the petroleum supply data system will undercount total gasoline supply.)
- Collect these new data elements:

—MTBE merchant plant production,
—MTBE captive plant production,
—All other oxygenates (methanol, TAME, TBA, and other oxygenates) production, and
—All other oxygenates (methanol, TAME, TBA, and other oxygenates) ending stocks.

Collect one new product for Form EIA–820 (Annual Refinery Report):

- other oxygenates (methanol, TAME, TBA, and other oxygenates)

There are no proposed changes to the Form EIA–803 (Weekly Crude Oil Stocks Report) or the Form EIA–813 (Monthly Crude Oil Report).

2004 Changes Proposed by EIA

Modify the product detail on the Forms EIA–800, EIA–801, EIA–802, EIA–804, EIA–810, EIA–811, EIA–812, EIA–814, and EIA–817 as follows:

Finished Motor Gasoline

- Reformulated (blended with ether)
- Reformulated (blended with alcohol)
- Reformulated (non-oxygenated)
- Oxygenated (blended with ether)
- Oxygenated (blended with alcohol)
- Conventional (blended with ether)
- Conventional (blended with alcohol)
- Conventional (non-oxygenated).

Motor Gasoline Blending Components

- Reformulated (including RBOB) for blending with ether
- Reformulated (including RBOB) for blending with alcohol
- Gasoline treated as blendstock (GTAB)
- All other motor gasoline blending components.

Distillate Fuel Oil

- 15 ppm sulfur and under
- Greater than 15 ppm sulfur to 50 ppm sulfur (inclusive)
- Greater than 50 ppm sulfur to 500 ppm sulfur (inclusive)
- Greater than 500 ppm sulfur to 2000 ppm sulfur (inclusive)
- Greater than 2000 ppm sulfur.

Naphtha-Type Jet Fuel

- Eliminate reporting of Naphtha-Type Jet Fuel on the Forms EIA–800, EIA–801, EIA–802, EIA–804, EIA–810, EIA–811, EIA–812, EIA–814, EIA–817, and EIA–820 as a separate product. Include it in miscellaneous products.

Form EIA–820 Changes

Add new categories for catalytic hydrocracking capacity by type of feed:

- Distillate
- Gas Oil
- Residual

Add new categories for catalytic hydrotreating capacity by product classification:

- Gasoline Desulfurization
- Kerosene and Jet Desulfurization
- Diesel Fuel Desulfurization
- Other Distillate
- Residual
- Other

Modify the product detail for distillate fuel storage capacity:

- 15 ppm sulfur and under
- Greater than 15 ppm sulfur to 50 ppm sulfur (inclusive)
- Greater than 50 ppm sulfur to 500 ppm sulfur (inclusive)
- Greater than 500 ppm sulfur to 2000 ppm sulfur (inclusive)

Greater than 2000 ppm sulfur.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burdens for the forms are estimated to average:

With the 2003 Changes (hours per response)

EIA–800, ''Weekly Refinery and Fractionator Report,''—1.38 hours
EIA–801, ''Weekly Bulk Terminal Report,''—0.83 hours
EIA–802, ''Weekly Product Pipeline Report,''—0.83 hours
EIA–803, ''Weekly Crude Oil Stocks Report,''—0.50 hours
EIA–804, ''Weekly Imports Report,''—1.38 hours
EIA–810, ''Monthly Refinery Report,''—4.13 hours
EIA–811, ''Monthly Bulk Terminal Report,''—1.93 hours
EIA–812, ''Monthly Product Pipeline Report,''—2.48 hours
EIA–813, ''Monthly Crude Oil Report,''—1.50 hours
EIA–814, ''Monthly Imports Report,''—2.20 hours
EIA–816, ''Monthly Natural Gas Liquids Report,''—0.83 hours
EIA–817, ''Monthly Tanker and Barge Movement Report,''—1.93 hours
EIA–819, ''Monthly Oxygenate Telephone Report,''—0.55 hours
EIA–820, ''Annual Refinery Report''—2.00 hours

With the 2004 Changes (hours per response)

EIA–800, ''Weekly Refinery and Fractionator Report,''—1.58 hours
EIA–801, ''Weekly Bulk Terminal Report,''—0.95 hours
EIA–802, ''Weekly Product Pipeline Report,''—0.95 hours
EIA–803, ''Weekly Crude Oil Stocks Report,''—0.50 hours
EIA–804, ''Weekly Imports Report,''—1.58 hours
EIA–810, ''Monthly Refinery Report,''—4.74 hours
EIA–811, ''Monthly Bulk Terminal Report,''—2.21 hours
EIA–812, ''Monthly Product Pipeline Report,''—2.85 hours
EIA–813, ''Monthly Crude Oil Report,''—1.50 hours
EIA–814, ''Monthly Imports Report,''—2.53 hours
EIA–816, ''Monthly Natural Gas Liquids Report,''—0.95 hours
EIA–817, ''Monthly Tanker and Barge Movement Report,''—2.21 hours
EIA–819, ''Monthly Oxygenate Telephone Report,''—0.63 hours
EIA–820, ''Annual Refinery Report''—2.30 hours

The estimated burdens include the total time necessary to provide the requested information. In your opinion, how accurate are the estimates?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, May 29, 2002.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–13893 Filed 6–3–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–001, Docket No. ER02–1656–001]

San Diego Gas and Electric Company, Complainant v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; California Independent System Operator Corporation; Notice Shortening Answer Period

May 29, 2002.

On May 21, 2002, the California Independent System Operator Corporation (ISO) filed an errata to its proposals for a Comprehensive Market Redesign originally filed on May 1, 2002. On May 24, 2002, the Commission issued a Notice of Filing that set the comment date as June 11, 2002 on Cal ISO's errata filing. By this notice, the period for filing answers to Cal ISO's errata is hereby shortened to and including June 4, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–13913 Filed 5–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2699–001, 2019–017, & 11563–002—CA]

Northern California Power Agency; Utica Power Authority; Notice of Availability of Environmental Assessment

Issued: May 29, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for licenses for the Angels Hydroelectric Project, Utica Hydroelectric Project, and the Upper Utica Project. Commission staff, with the U.S. Forest Service as a cooperating agency, has prepared an Environmental Assessment (EA) for the project. These projects are located on the North Fork Stanislaus River, Silver Creek, Mill Creek, and Angels Creek in Alpine, Calaveras, and Tuolumne Counties, California, partially within the Stanislaus National Forest.

The EA contains the our analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The DEA 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).

Any comments should be filed within 60 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project Nos. 2699–001, 2019–017, & 11563–002 to all comments. 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 under the ''e-Filing'' link.

For further information, contact Timothy Welch at (202) 219–2666.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–13912 Filed 6–3–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7222–7]

Fuels and Fuel Additives: Removal of the Reformulated Gasoline Program From Seven Counties in Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Today's notice announces and describes EPA's earlier approval of Maine's petition to opt-out of the federal reformulated gasoline (RFG) program. EPA's regulations, promulgated under the Clean Air Act (the Act), establish the procedures and criteria for opting out of the RFG program. In accordance with these procedures and criteria, Maine's withdrawal from the RFG program became effective as of March 10, 1999. Therefore, as of March 10, 1999, EPA no longer requires federal RFG to be sold in the seven southern counties in Maine.

DATES: The effective date for removal of Androscoggin; Cumberland; Kennebec; Knox; Lincoln; Sagadahoc; and York Counties in the State of Maine from the federal RFG program is March 10, 1999.

ADDRESSES: Materials relevant to Maine's withdrawal from the federal RFG program may be found in Docket A–2001–32. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, in room M–1500 Waterside Mall. Documents may be inspected on business days from 8:00 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material.

Materials are also available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333. For further information, contact Robert C. Judge at (617) 918–1045.

FOR FURTHER INFORMATION CONTACT: John Brophy, U.S. Environmental Protection Agency, Office of Air and Radiation, 1200 Pennsylvania Ave., NW (Mail Code 6406J), Washington, DC 20460, (202) 564–9068, *e-mail: brophy.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

Availability on the Internet

Copies of this final rule are available electronically from the EPA Internet Web site. This service is free of charge, except for your existing cost of Internet connectivity. An electronic version is made available on the day of publication on the primary Internet site listed below. The EPA Office of Transportation and Air Quality will also publish this final rule on the secondary Web site listed below. *http://www.epa.gov/docs/fedrgstr/EPA-AIR/* either select desired date or use Search feature) *http://www.epa.gov/otaq/* (look in What's New or under the specific rulemaking topic).

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

I. Background

A. Opt-out Procedures

The process of withdrawing from the RFG program, pursuant to the regulatory provisions of 40 CFR 80.72 (the Opt-out Rule), does not require notice and comment rulemaking either under section 307(d) of the Act or under the Administrative Procedure Act. See 61 FR 35673 at 35675 (July 8, 1996). EPA established a petition process to allow case-by-case consideration of individual state requests to opt-out of the federal RFG program.[1] The Opt-out Rule establishes specific requirements regarding what information a State must submit in connection with an opt-out petition. These regulatory provisions also address when a state's petition is complete and the appropriate transition time for opting out. EPA has applied these criteria, and has approved Maine's petition for withdrawal from the RFG program, effective as of March 10, 1999.

The Opt-out Rule requires the Governor of the state to submit a petition to the Administrator requesting to withdraw from the RFG program, along with certain information necessary for EPA to grant the petition. Finally, if the Administrator approves the petition, the Opt-out Rule requires EPA to notify the state in writing, and set an effective date for the opt-out that is no less than 90 days from the date of the written notification. The Opt-out Rule also directs EPA to publish a notice in the **Federal Register** announcing the approval of any opt-out petition and the effective date for removal of the state from the RFG program.

B. Maine Opt-out of RFG

Maine had participated voluntarily in the federal RFG program since it began in January 1995. By letter dated May 21, 1998, the Governor of Maine announced the state's intent to opt-out, but requested that EPA not act on the petition until the state completed certain testing and made a decision about how it would replace the emission reductions that it was relying on from reformulated gasoline.

The Opt-out Rule required states with voluntary RFG programs to decide by December 31, 1997 whether they wanted to remain in the RFG program; otherwise, these procedures require them to stay in the program through 2003.[2] EPA did not receive any petitions by December 31, 1997. However, EPA's procedures allowed a state to request an extension to the December 31 deadline if the state had legislation pending to opt-out of the program. In a letter to EPA dated December 1, 1997, the Governor of Maine stated that the Maine legislature was considering such legislation. Thus, EPA granted Maine an

[1] Pursuant to authority under sections 211(c) and (k) and 301(a) of the Clean Air Act, EPA promulgated regulations to provide criteria and general procedures for states to opt-out of the RFG program where the state had previously voluntarily opted into the program. The regulations were initially adopted on July 8, 1996 (61 FR 35673); and were revised on October 20, 1997 (62 FR 54552).

[2] 40 CFR 80.72(c).

extension until May 31, 1998. By letter dated May 21, 1998, the Governor requested to withdraw from the RFG program, and met the deadline set by the Administrator. However, the Governor requested that EPA not act on the request until the state had finished certain testing.

At the time of the opt out request, Maine did not rely on RFG as an element of any State Implementation Plan (SIP) or SIP revision that had been approved by the EPA. However, Maine did rely on RFG in a SIP submission that was pending before the Agency. Therefore, EPA's opt-out regulations required the State to indicate whether it would revise its pending SIP submission, and, if so, to describe the air quality measures, if any, that the State would use to replace RFG.

The Governor's May 21, 1998 petition did not identify any replacement measures for the Volatile Organic Compounds (VOC) reductions benefits of the RFG program that the state relied upon in its pending 15% SIP. However, by letter dated October 13, 1998, the Governor requested that EPA approve the petition to opt-out of the RFG program and identified two possible state fuel alternatives to replace the VOC benefits associated with RFG. The letter also noted that Maine intended to initiate rulemaking to adopt an alternative fuel before the next ozone season. EPA responded by letter dated October 30, 1998, conditionally approving the opt-out request and setting an opt-out effective date of January 28, 1999, ninety days from the date of the conditional approval. EPA made the opt-out contingent on Maine and EPA agreeing on (1) identification of the replacement fuel measure or other measure which Maine would implement in order to provide VOC reductions equivalent to RFG, (2) a projected schedule for implementing the replacement measure, and (3) an explanation of how this action affects the state implementation plan. EPA stated that it may extend the opt-out effective date in order to allow EPA and Maine to reach agreement.

Maine scheduled a hearing for January 20, 1999 to consider the two alternative fuels proposals described in the October 13, 1998 letter. EPA offered comments on the two measures at this hearing and suggested another alternative that would provide the long-term VOC reductions that Maine needed to replace RFG. By letter dated January 22, 1999, EPA gave notice to the Governor that it had extended the effective date for Maine's withdrawal from the RFG program until March 10, 1999, in order to provide time for EPA and the state to reach agreement on the conditions of the opt-out. On February 24, 1999, Maine's Board of Environmental Protection adopted the measure suggested by EPA.[3] By letter dated March 5, 1999, EPA notified the Governor that all of the conditions of the opt-out had been satisfied, and that EPA would not extend the opt-out effective date any further.

II. Action

In today's notice, EPA is announcing that it has approved the petition submitted by the Governor of Maine to withdraw the Maine counties of Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York from the RFG program. This notice is not itself a final agency action, but a public announcement of EPA's earlier approval of Maine's request to opt out of the RFG program. EPA's approval of Maine's petition was based on the May 21, 1998 and October 13, 1998 letters to the Administrator from the Governor of Maine, and on the regulatory provisions of 40 CFR 80.72. In accordance with the procedures set forth in § 80.72, the effective date for Maine's withdrawal is March 10, 1999. This opt-out effective date applies to retailers, wholesale purchaser-consumers, refiners, importers, and distributors. In a final rule published elsewhere in today's **Federal Register**, EPA is amending § 80.70(j)(5) of the RFG regulations to reflect that these seven counties in Maine are no longer covered areas in the federal RFG program.

Dated: May 23, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–13978 Filed 6–3–02; 8:45 am]

BILLING CODE 6560–50–P

[3] In a final rulemaking, EPA recently approved Maine's SIP revision request, including a state fuel control, which demonstrates how the State will achieve attainment in these seven counties without RFG [67 FR 10099, March 6, 2002]. As described in EPA's approval of Maine's SIP, the revision Maine ultimately submitted to EPA includes a State fuel control that is different from, and less restrictive than, the one adopted by the State on February 24, 1999.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7223–9]

Technical Peer Review Workshop on the Draft Document Entitled A Review of the Reference Dose and Reference Concentration Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: EPA is announcing a meeting, organized and convened by Versar, Inc., a contractor to EPA's Risk Assessment Forum, for external scientific peer review of the draft document entitled, *A Review of the Reference Dose and Reference Concentration Processes* (EPA/630/P–02/002A). The purpose of the meeting is to discuss technical issues associated with the Risk Assessment Forum Reference Dose/Reference Concentration (RfD/RfC) Technical Panel recommendations. The draft document is not a guidance document but an analysis and review of the current RfD/RfC process and a series of recommendations to improve the process. Final decisions on implementing any of the recommendations from the Technical Panel will be made by the Agency's Science Policy Council. The EPA also is announcing a 30-day public comment period for the draft document. EPA will consider the peer review advice and public comment submissions in revising the document.

DATES: The peer review meeting will be held from 8:00 a.m. to 5:00 p.m. on Wednesday, June 19, 2002. The 30-day public comment period begins June 4, 2002, and ends July 5, 2002. Technical comments should be in writing and must be postmarked by July 5, 2002.

ADDRESSES: The meeting will be held at the Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209. Versar, Inc., an EPA contractor, will convene and facilitate the workshop. To register to attend the workshop as an observer, visit *www.versar.com/epa/rfdrfcreview.htm,* or contact Ms. Traci Bludis, Versar, Inc.; telephone: (703) 750–3000 extension 449; facsimile: 703–642–6954; e-mail *bluditra@versar.com* by 5 p.m. eastern daylight time, June 14, 2002. The draft document, *A Review of the Reference Dose and Reference Concentration Processes,* is available via the Internet on the Risk Assessment Forum Publications home page at *http://www.epa.gov/ncea/raf/rafpub.htm* under What's New. Copies are not available from Versar Inc.

Public comments may be mailed to the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street, NW, 5th Floor, Washington, DC 20006; telephone: 202–564–3261; facsimile: 202–565–0050.

FOR FURTHER INFORMATION CONTACT: For further information concerning the technical peer review workshop or the draft document, *A Review of the Reference Dose and Reference*

Concentration Processes, please contact Marilyn Brower, U.S. EPA Office of Research and Development (8601–D), 1200 Pennsylvania Ave. NW, Washington, DC 20460; Telephone: (202) 564–3363; Fax: (202) 565–0062; e-mail: *brower.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: The RfD/RfC Technical Panel (hereafter the Technical Panel) was established in response to a request from the Agency's 10X Food Quality Protection Act Task Force to the Science Policy Council and the Risk Assessment Forum. A draft toxicology report developed by the 10X Task Force raised a number of issues that relate to the derivation of the oral reference dose (RfD) and inhalation reference concentration (RfC). The Science Policy Council and the Risk Assessment Forum agreed that these issues should be examined on a broader scale than just for pesticides, with input from various program offices within the Agency and from the outside scientific/policy community. This charge was expanded by the Forum to include a more in-depth review of a number of issues related to the RfD/RfC process, in part because of several other Forum activities that were underway (*e.g.,* development of the Framework for the Harmonization of Cancer and Noncancer Risk Assessment, revision of the Benchmark Dose Guidance Document, and revision of the Guidelines for Carcinogen Risk Assessment). In addition, the RfD/RfC derivation process had not been evaluated in detail for a number of years, and several scientific issues concerning children's health, *e.g.,* neurotoxicity and immunotoxicity, have become increasingly important in risk assessment. These activities have prompted the need to re-examine the RfD/RfC process and to coordinate these efforts with other related activities. In particular, it was important that efforts continue to focus on moving toward the goal of harmonization of risk assessment approaches for all health endpoints and making efficient use of animal testing to achieve this goal.

The draft report entitled, *A Review of the Reference Dose and Reference Concentration Processes* is not a guidance document but represents an analysis of the current RfD/RfC processes. The draft report summarizes the review and deliberations of the Technical Panel and presents a number of recommendations to improve the RfD/RfC processes. The review further documents recommendations that should be considered in the implementation of changes in the current process and/or development of needed guidance. The peer reviewers are being asked to review the recommendations of the Technical Panel and to provide comments regarding the scientific rationale for the recommendations. Comments from the external peer reviewers and the public will help inform the process.

Dated: May 28, 2002.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–13981 Filed 6–3–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

May 29, 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 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; and 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: Written comments should be submitted on or before July 5, 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 Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1003.

Title: Telecommunications Carrier Emergency Contact Information.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions, state, local or tribal government.

Number of Respondents: 5,000.

Estimated Time Per Response: .166 hours (10 minutes).

Frequency of Response: On occasion and annual reporting requirements.

Total Annual Burden: 830 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission must be able to contact its licensees and permittees in a communications emergency. We will collect emergency contact information from telephone wireless, broadcast, cable and satellite companies. We will also collect emergency contact information for federal, state and local emergency management entities. This information is needed in the event of a communications disruption.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–13920 Filed 6–3–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 02–1006]

Telecommunications Relay Services Applications for State Certification and Renewal of Current Certification Accepted until October 1, 2002

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that the Federal Communications Commission will accept applications for the renewal of state telecommunications relay services (TRS) program certification from July 26, 2002 until October 1, 2002. Current state certification expires July 26, 2003. The Commission's rules provide that states may apply for a renewal of their certified state TRS program one year prior to the expiration of their current certification.

DATES: TRS applications for state certifications and renewal certifications are due on or before October 1, 2002.

ADDRESSES: *See* **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For more information about the TRS state certification and renewal certification, please contact Dana Jackson, of the Consumer and Government Affairs Bureau at (202) 418–2247 (voice), (202) 418–7898 (TTY) or e-mail *dljackso@fcc.gov.*

SUPPLEMENTARY INFORMATION: Parties who choose to submit by paper must submit an original and four copies of each filing on or before October 1, 2002. To expedite the processing of applications, applicants are encouraged to submit an additional copy to Attn: Dana Jackson, Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street, SW, Room 5–A741, Washington, DC 20554 or by e-mail at *dljackso@fcc.gov.* Applicants should also submit electronic disk copies of their application on a standard 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be submitted in ''read-only'' mode and must be clearly labeled with the state's name, the filing date and captioned ''TRS Certification Application.''

Filings 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, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554.

The filings and comments will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. They 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.* Copies of this document in other alternative formats (computer diskette, large print and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau at (202) 418–7426 (voice), (202) 418–7365 (TTY), or e-mail *bmillin@fcc.gov.* This Public Notice can also be downloaded in Text and ASCII formats at *http://www.fcc.gov/cgb/dro.*

Synopsis

The Commission's rules for the provision of TRS, pursuant to Title IV of the Americans with Disabilities Act, 47 U.S.C. 225, are codified at 47 CFR 64.601–605. Pursuant to 47 CFR 64.605(b), a state desiring certification of its TRS program must establish that:

(1) The state program meets or exceeds all operational, technical, and functional minimum standards contained in 47 CFR 64.604;

(2) The state program makes available adequate procedures and remedies for enforcing the state program; and

(3) Where a state program exceeds the mandatory minimum standards contained in Section 64.604, the state establishes that its program in no way conflicts with federal law.

Pursuant to 47 CFR 64.605(a), documentation must be submitted through the state's office of the governor or other delegated executive office empowered to provide TRS. All documentation in support of the application must be submitted in narrative form, and must clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. To the maximum extent possible, states should provide historical, statistical, and illustrative evidence demonstrating compliance with the Commission's TRS rules.

Upon receipt, the Commission will give public notice of state TRS certification applications and provide notification in the **Federal Register**, pursuant to 47 CFR 64.605(a). Interested parties will be invited to comment on each application within a period of time set by the Commission. In the event that a state's application is opposed or incomplete, the Commission may contact the responsible state officer to seek further documentation. If it appears that a state program will not meet certification requirements, the Commission will send notice to the responsible state officer prior to July 26, 2003, giving the state an opportunity to demonstrate that it has taken, or will take measures to bring its program into compliance with the Commission rules by July 26, 2003.

The Commission will act to approve the applications for certification of states that demonstrate compliance with all applicable requirements of the Commission's rules on or before July 26, 2003. Approved certifications will be in effect for five (5) years until July 26, 2008 pursuant to 47 CFR 64.605(c). In the event a state does not apply for certification, the Commission will contact common carriers providing voice transmission service in that state to ensure that TRS service meeting the Commission minimum operational, functional and technical standards is available within their service areas. *See* 47 U.S.C. 225(c).

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 02–13919 Filed 6–3–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1416–DR]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1416–DR), dated May 21, 2002, and related determinations.

EFFECTIVE DATE: May 21, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 21, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting

from severe storms, tornadoes, and flooding on April 21, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert R. Colangelo of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

Alexander, Clay, Clinton, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Madison, Marion, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Washington, Wayne, White, and Williamson Counties for Individual Assistance.

All counties within the State of Illinois are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–13890 Filed 6–3–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1412–DR]

Missouri; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri, (FEMA–1412–DR), dated May 6, 2002, and related determinations.

EFFECTIVE DATE: May 22, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2002:

Barton, Macon, Shelby, and Webster Counties for Public Assistance.

Reynolds County for Public Assistance (already designated for Individual Assistance).

Washington County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–13889 Filed 6–3–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 18, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First National Bank Employees Profit Sharing Plan and Trust, Carmi, Illinois; and Alvin Fritschle, Mary Sailer and Jack Martin, all of Carmi, Illinois, to collectively own and vote as a trustee and on an individual basis, an additional 2.98 percent, for total combined control of 13.16 percent, of Southern Illinois Bancorp, Inc., Carmi, Illinois, and thereby indirectly acquire voting shares of The First National Bank of Carmi, Carmi, Illinois.

Board of Governors of the Federal Reserve System, May 29, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–13879 Filed 6–3–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 28, 2002.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Overton Financial Corporation, Overton, Texas and Overton Delaware Corporation, Dover, Delaware; to increase ownership in Longview Financial Corporation, Longview, Texas, by 2.95 percent to 38.29 percent, and therefore, indirectly, maintain a 100 percent ownership in Longview Delaware Corporation, Dover, Delaware, and, indirectly a 99 percent ownership in its banking subsidiaries, Longview Bank and Trust Company, Longview, Texas, and First State Bank, Van, Texas.

Board of Governors of the Federal Reserve System, May 29. 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–13878 Filed 6–3–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on June 20–21, 2002

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics will hold its fourth meeting at which it will discuss human cloning, the patentability of human embryos, and other issues.

DATES: The meeting will take place June 20, 2002, from 9:00 am to 4:45 pm ET, and June 21, 2002, from 9:00 am to 12:30 pm ET.

ADDRESSES: Ritz-Carlton, 1150 22nd Street, NW, Washington, DC 20037.

Public Comments: The meeting agenda will be posted at *http://www.bioethics.gov.* Written statements may be submitted by members of the public for the Council's records. Please submit statements to Ms. Diane Gianelli (tel. 202/296–4669 or e-mail info@bioethics.gov). Persons wishing to comment in person may do so during the hour set aside for this purpose beginning at 3:45 p.m. ET on Thursday, June 20, 2002. Comments will be limited to no more than five minutes per speaker or organization. Please give advance notice of such statements to Ms. Gianelli at the phone number given above, and be sure to include name, affiliation, and a brief description of the topic or nature of the statement.

FOR FURTHER INFORMATION CONTACT: Diane Gianelli, 202/296–4669, or visit our website at *http://www.bioethics.gov.*

Dated: May 28, 2002.

Dean Clancy,

Executive Director, The President's Council on Bioethics.

[FR Doc. 02–13925 Filed 6–3–02; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Presidential Advisory Council on HIV/AIDS

AGENCY: Office of the Secretary, Office of Public Health and Science.

ACTION: Notice of Meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. This meeting is open to the public. A description of the Council's functions is included also with this notice.

DATES: June 21, 2002, 8:30 am to 4:00 pm, and June 22, 2002, 8:30 am to 3:00 pm.

ADDRESSES: Wyndham City Center Hotel; 1143 New Hampshire Avenue, N.W.; Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Patricia F. Ware, Executive Director, Presidential Advisory Council on HIV/AIDS, 734 Jackson Place, NW., Washington, DC 20503; (202) 456–7334.

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the Secretary of Health and Human Services. The Council is to be composed of not more than 35 members. Council membership is selected by the Secretary from individuals who are considered authorities with particular expertise in, or knowledge of, matters concerning HIV/AIDS.

The agenda for this Council meeting includes the following topics: HIV/AIDS prevention, short-term solutions to the AIDS Drug Assistance Program (ADAP) shortage, rapid testing, and international issues. Time will be allotted during the meeting to for public comment.

Dated: May 17, 2002.

Patricia F. Ware,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 02–13863 Filed 6–3–02; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on Minority Health will meet to discuss racial and ethnic disparities in health, as well as other related issues. The meeting has been scheduled immediately prior to the Secretary's National Leadership Summit on Eliminating Racial and Ethnic Disparities in Health. The meeting is open to the public and will allow attendees of the Summit an opportunity to participate in the Advisory Committee on Minority Health's public comment period. This is a unique opportunity for the public to provide comments on barriers and strategies for increasing diversity in the health professions and on health issues along the US borders.

Public comments are limited to 3 minutes each. Written comments may be submitted in advance in addition to the oral comments. Comments should be faxed to Sheila P. Merriweather at the Office of Minority Health at least two business days prior to the meeting.

DATES: The Advisory Committee on Minority Health will meet on Tuesday, July 9, 2002 from 9:00 a.m. to 5:00 p.m., and Wednesday, July 10, 2000 from 9:00 a.m. to 12 noon. The public comment period will be held on Wednesday, July 10.

ADDRESSES: The meeting will be held at the Hilton Washington Hotel and Towers, 1919 Connecticut Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Sheila P. Merriweather, Office of Minority Health, Rockwall Building, 5515 Security Lane, Suite 1000, Rockville, MD 20852. Phone: 301–443–9923, Fax: 301–443–8280.

Dated: May 22, 2002.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 02–13864 Filed 6–3–02; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–02–07]

Fiscal Year 2002 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications.

SUMMARY: The Administration on Aging announces that under the Pension Information and Counseling Program, it will hold a competition to fund grant awards for two (2) to three (3) projects at a federal share of approximately $100,000 to $150,000 per year for a project period of up to three (3) years.

Purpose of grant awards: The purpose of these projects is to establish, expand or improve Pension Information and Counseling Projects to ensure that older persons eligible for pension benefits have the requisite knowledge, information and counseling to fully exercise their rights and entitlements.

Eligibility for grant awards and other requirements: Eligibility for grant awards is open to public and/or non-profit agencies, faith-based and community-based organizations with a proven record of providing services related to the retirement of older persons, services to Native Americans, or specific pension counseling. Grantees are required to provide a 25% non-federal match.

DATES: The deadline date for the submission of applications is August 5, 2002.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office of Consumer Choice and Protection, 330 Independence Ave., SW., Washington, DC 20201, or by calling 202/619–1058 or on line at: *http://www.aoa.gov/t4.*

Applications must be mailed or hand-delivered to the Office of Grants Management at the same address. Instructions for electronic mailing of grant applications are available at *http://www.aoa.gov/egrants.*

Dated: May 30, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–13930 Filed 6–3–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02175]

Applied Research on Antimicrobial Resistance (AR): Validation of National Committee for Clinical Laboratory Standards (NCCLS) Breakpoints for Human Pathogens of Public Health Importance; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of a fiscal year (FY) 2002 funds for a grant program for Applied Research on Antimicrobial Resistance (AR): Validation of National Committee for Clinical Laboratory Standards (NCCLS) Breakpoints for Human Pathogens of Public Health Importance. This program addresses the ''Healthy People 2010'' focus area Immunization and Infectious Diseases.

The purpose of the program is to provide assistance for applied research aimed at prevention and control of the emergence and spread of antimicrobial resistance in the United States. This program will focus on validation of NCCLS breakpoints for human pathogens of public health importance. This program's design will implement Part 1 of the Public Health Action Plan to Combat Antimicrobial Resistance, Domestic Issues. Visit the Internet site: *www.cdc.gov/drugresistance/actionplan/index.htm* for more information on the Action Plan.

This research includes three components that will provide information needed to prevent and control AR: (1) Validating existing interpretive criteria for pathogens of public health importance; (2) developing new interpretive criteria for pathogens of public health importance using existing NCCLS methods and quality control; and (3) developing new interpretive criteria and new antimicrobial susceptibility testing methods for pathogens of public health importance using existing NCCLS methods and quality control as a starting point for novel test development.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for Infectious Diseases: (1) Reduce the spread of antimicrobial resistance; (2) protect Americans from priority infectious diseases; and (3) apply scientific findings to prevent and control infectious diseases.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, (42 U.S.C. 241(a) and 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit organizations, community-based organizations, faith-based organizations, State and local governments 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, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Title two 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 $600,000 is available in FY 2002 to fund approximately three awards. It is expected that the average award will be $200,000, ranging from $150,000 to $250,000. It is expected that the awards will begin on or about August 30, 2002, and will be made for a 12-month budget period within a project period of up to three 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.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

1. Assemble data from population distributions of susceptible and resistant organisms [based on minimum inhibitory concentration (MIC) data], pharmacokinetic (PK) and pharmacodynamic (PD) parameters, and clinical trials to validate or revise existing breakpoints for bacteria of particular public health importance. The interpretive criteria must be developed using the standard NCCLS susceptibility testing methods outlined in NCCLS documents M2–A7 (2000) and M7–A5 (2000). These documents can be found at: *www.nccls.org.*

2. Provide a method that is in line with other NCCLS methods to be elucidated, including the appropriate quality control organisms, and the ranges of MICs or zone diameters that constituted a test that was in control for organisms which NCCLS has yet to establish and publish a standardized susceptibility testing method. Thus, potential projects include validating existing interpretive criteria for pathogens of public health importance, developing new interpretive criteria for pathogens of public health importance using existing NCCLS methods and quality control, or developing new interpretive criteria and new antimicrobial susceptibility testing methods for pathogens of public health importance using existing NCCLS methods and quality control as a starting point for novel test development.

F. Content

Letter of Intent (LOI)

An LOI is optional for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than five double-spaced pages, printed on one side, with one-inch margins, and unreduced font. Your letter of intent will be used to plan the review more effectively and efficiently and should include the following information: (1) the name of the organization's principal investigator, and (2) a brief description of the scope and intent of the proposed research work.

Applications

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 one inch margins, and unreduced font.

The narrative should consist of, at a minimum, a detailed Research Plan, Objectives, Methods, an Evaluation Plan and Budget.

G. Submission and Deadline

Letter of Intent (LOI)

On or before June 15, 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–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available 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)
Narrative

On or before 5:00 p.m. Eastern Time July 16, 2002, submit the application to: Technical Information Management Section, PA# 02175, 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 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 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 grant. Measures of Effectiveness must relate to the performance 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 a Special Emphasis Panel appointed by CDC and will be rated in accordance with current CDC peer review procedures:

1. Background and Public Health Importance

Extent to which the applicant's discussion of the background for the proposed project demonstrates a clear understanding of the purpose and objectives of this grant program. Extent to which the applicant illustrates and justifies the need for the proposed project that is consistent with the purpose and objectives of this grant program.

2. Capacity

a. Extent to which the applicant describes adequate resources and facilities (both technical and administrative) for conducting the project.

b. Extent to which the applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research related to that proposed as evidenced by curriculum vitae, publications, etc.

c. Extent to which the applicant includes letters of support from appropriate non-applicant organizations, individuals, etc. Extent to which the letters clearly indicate the author's commitment to participate and/or collaborate as described in the operational plan.

3. Objectives and Technical Approach

a. Extent to which the applicant describes specific objectives of the proposed project which are consistent with the purpose and goals of this grant program and which are measurable and time-phased.

b. Extent to which the applicant presents a detailed operational plan for initiating and conducting the project, which clearly and appropriately addresses all Program Requirements. Extent to which the applicant clearly identifies and describes appropriate study sites. Extent to which the applicant clearly identifies specific assigned responsibilities for all key professional personnel. Extent to which the plan clearly describes the applicant's technical approach/methods for conducting the proposed studies and extent to which the plan is adequate to accomplish the objectives. Extent to which the applicant describes specific study protocol(s), the roles of partners or collaborators or plans for the development of study protocols that are appropriate for achieving project objectives.

c. If the proposed project involves human subjects, the degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation. (2) The proposed justification when representation is limited or absent. (3) A statement as to whether the design of the study is adequate to measure differences when warranted. (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented.

d. Extent to which the applicant provides a detailed and adequate plan for evaluating study results and for evaluating progress toward achieving project objectives.

4. Measures of Effectiveness

The extent to which the applicant provides Measures of Effectiveness that will demonstrate the accomplishment of the purpose of the grant. Are the measures objective/quantitative and do they adequately measure the intended outcome?

5. Budget (Not scored)

The extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of grant funds.

6. Human Subjects (Not scored)

The extent to which the applicant adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Semiannual 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

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 announcement 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–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status
AR–22 Research Integrity

J. Where to Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms 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: Rene′ Benyard, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Mailstop K–75, Atlanta, GA 30341–4146. Telephone number: (770)488–2722. E-mail address: *bnb8@cdc.gov.*

For program technical assistance, contact: Marsha Jones, Health Scientist, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mailstop C–12, Atlanta, GA 30333. Telephone number: (404)639–2603. E-mail address: *maj4@cdc.gov.*

Dated: May 29, 2002.

Sandra R. Manning,

CGFM Director, Procurement and Grants Office, Center for Disease Control and Prevention.

[FR Doc. 02–13883 Filed 6–3–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Guide to Community Preventive Services (GCPS) Task Force: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Task Force on Community Preventive Services

Times and Dates: 9 a.m.–6 p.m., June 12, 2002. 8:30 a.m.–3 p.m., June 13, 2002.

Place: The Sheraton Colony Square, 188 14th Street, NE, Atlanta, Georgia 30361, telephone (404) 892–6000.

Status: Open to the public, limited only by the space available.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

Matters to be Discussed: Agenda items include: briefings on the administrative information, dissemination activities, economics reviews, and recommendation language; approved recommendations for the following interventions: Informed Decision Making, Interventions to Increase Breast, Cervical and Colorectal Cancer Screening: Group Education, Interventions to Reduce UV Exposure and Increase UV Protective Behaviors in Secondary Schools/Colleges, Disease and Care Management to Prevent Relapse and Recurrence, Mass Media Campaigns for Alcohol-Impaired Driving, Interventions on Transportation/Travel and Urban Design (Form)/Land-Use, Promoting

the Personal Development And Parenting Skills of New and Expectant, Socially Disadvantaged Mothers and Youth Development, Targeted Vaccines Strategies, Therapeutic Foster Care for Prevention of Violence, and updates on the Clinical Guide and the Nutrition Chapter.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Stephanie Zaza, M.D., Chief, Community Guide Branch, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 4770 Buford Highway, M/S K–73, Atlanta, Georgia 30341, telephone 770/488–8189.

Persons interested in reserving a space for this meeting should call 770/488–8189 by close of business on June 6, 2002.

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 29, 2002.

Joseph Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–13882 Filed 6–3–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10049]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, 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 collections 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 performance of the agency's functions; (2) the accuracy of the estimated 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.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Assessing the CMS Fall Campaign; *Form No.:* CMS–10049 (OMB# 0938–0851); *Use:* CMS will collect information 3 times during its fall media campaigns to assess the campaign. CMS will conduct the survey via telephone, visits to our Web site, and by monitoring of our 1–800–MEDICARE number.; *Frequency:* Once; *Affected Public:* Individuals or Households; *Number of Respondents:* 10,800; *Total Annual Responses:* 10,800; *Total Annual Hours:* 2,700.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards Attention: Melissa Musotto Room N2–14–26, 7500 Security Boulevard Baltimore, Maryland 21244–1850.

Dated: May 21, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–13865 Filed 6–3–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10060]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, 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 collections 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 performance of the agency's functions; (2) the accuracy of the estimated 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.

Type of Information Collection Request:; Title of Information Collection:; Form No.: CMS–10060 (OMB# 0938–NEW); *Use:* This project completion report derives from the Quality Improvement System for Managed Care (QISMC) Standards and Guidelines as required by the Balanced Budget Act of 1997 (as amended by the Balanced Budget Refinement Act of 1999) and the related regations, 42 CFR 422.152. These regulations established QISMC as a requirement for Medicare + Choice (M+C) Organizations by requiring improved health outcomes for enrolled beneficiaries. The provisions of QISMC specify that M+C organizations will implement and evaluate quality improvement projects. The form submitted herein will permit M+C organizations to report their completed projects to CMS in a standardized fashion for evaluation by CMS of the M+C organization's compliance with regulatory provisions. This form will improve consistency and reliability in the CMS evaluation process as well as provide a standardized structure for public use and review.; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 155; *Total Annual Responses:* 310; *Total Annual Hours:* 1240 hours.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed

information collections must be mailed within 30 days of this notice directly to the OMB desk officer:

OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 22, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–13866 Filed 6–3–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB review; comment request

Title: Child and Family Services Plan, Annual Progress and Services Report, and Budget Request

OMB No.: 0980–0047

Description: Under title IV–B, subparts 1 and 2, of the Social Security Act, States and Indian Tribes are to submit a five year Child and Family Services Plan, an Annual Progress and Services Report (APSR), and an annual budget request and estimated expenditure report (CFS–101). The plan is used by States and Indian Tribes to develop and implement services, and describe coordination efforts with other Federal, state and local programs. The APSR is used to provide updates and changes in the goals and services under the five year plan. The CFS–101 will be submitted annually with the APSR to apply for appropriated funds for the next fiscal year. The CFSP also includes the required State plans under Section 106 of the Child Abuse Prevention and Treatment Act and section 477 of title IV–E, the Chafee Foster Care Independence Program.

Respondents: 300

Annual Burden Estimates:

Instrument	Number of respondent	Number of responses per respondent	Average burden hours per response	Total burden hours
CFSP	300	1	500	150,000/5 = 30,000
APSR	300	1	270	81,000
CFS101	300	1	5	1,500
Estimated Total Annual Burden Hours:				112,500

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 470 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: May 29, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–13880 Filed 6–3–02; 8:45 am]

BILLING CODE 4104–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0124]

Draft Guidance for Industry: Notifying FDA of Fatalities Related to Blood Collection or Transfusion; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Notifying FDA of Fatalities Related to Blood Collection or Transfusion'' dated June 2002. The draft guidance document, when finalized, is intended to provide recommendations to blood collection or transfusion facilities on reporting fatalities related to blood or blood component collection or blood transfusion to FDA's Center for Biologics Evaluation and Research (CBER).

DATES: Submit written or electronic comments on the draft guidance to ensure their adequate consideration in preparation of the final document by September 3, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written or electronic comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled '' Guidance for Industry: Notifying FDA of Fatalities Related to Blood Collection or Transfusion'' dated June 2002. Under 21 CFR 606.170(b), fatalities related to blood collection or transfusion are required to be reported to CBER. The draft guidance document is intended to provide recommendations to a blood collection or transfusion facility on reporting fatalities related to blood or blood component collection or blood transfusion to CBER.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance document represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

This draft document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this draft guidance document. Submit written or electronic comments to ensure adequate consideration in preparation of the final document by September 3, 2002. Two copies of any written comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cber/guidelines.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: April 26, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–13860 Filed 6–3–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.576]

Office of Refugee Resettlement (ORR) Announcement for Services to Refugees [1]

AGENCY: Office of Refugee Resettlement (ORR), ACF, DHHS.

ACTION: Request for applications for projects to support services for recently arrived refugees and ethnic community organizations. This notice announces two of the four Categories of the ORR Standing Announcement for Services to Recently Arrived Refugees published in the **Federal Register** on May 9, 2001 (66 FR 23705).

SUMMARY: This ORR Announcement invites submission of grant applications for funding, on a competitive basis, in two categories of the ORR Standing Announcement for Services to Recently Arrived Refugees: Category 2—Unanticipated Arrivals, to provide services to unanticipated arrivals, i.e., refugees who have been resettled in unexpected numbers in communities where linguistically or culturally appropriate services for these refugees do not exist and Category 4—Ethnic Community Self-Help to connect refugees and their communities with community resources.

DATE: The closing date for applications is July 5, 2002.

Announcement Availability: The program announcement and the application materials are available from Sue Benjamin and Marta Brenden, Office of Refugee Resettlement (ORR), 370 L'Enfant Promenade SW., Washington, DC 20447 and from the ORR Web site at *www.acf.dhhs.gov/programs/orr.*

FOR FURTHER INFORMATION CONTACT: Category 2—Sue Benjamin at (202) 401–4851 or *SBenjamin@acf.hhs.gov* and Category 4—Marta Brenden at (202) 205–3589 or *MBrenden@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background, legislative authority, funding availability, CFDA Number, eligible applicants, project and budget periods, and for each of the four categories—program purpose and objectives, allowable activities, and review criteria.

Part II: The Review Process—intergovernmental review, initial ACF screening, competitive review and evaluation criteria.

Part III: The Application—application forms, application submission and deadlines, certifications, assurances and disclosures required for non-construction programs, general instructions for preparing a full project description, and length of applications.

Part IV: Post-award—applicable regulations, treatment of program income, and reporting requirements.

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The following information collections are included in the program announcement: OMB Approval No. 0970–0139, ACF UNIFORM PROJECT DESCRIPTION (UPD) attached as Appendix A, which expires 12/30/03 and OMB Approval No. 0970–0036, ORR Quarterly Performance Report (QPR) and Schedule C which expire 7/31/02. 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.

Part I: Background

The ORR Director, as stated in the Standing Announcement for Services to Recently Arrived Refugees notice published in the **Federal Register** on May 9, 2001 (66 FR 23705), may invite applications outside of the proposed closing dates, if necessary, to respond to the needs of an imminently arriving refugee population. For this reason, the ORR Director intends to support under this announcement unanticipated arrivals of refugees in U.S. communities. The ORR Director also intends to support refugee ethnic community and faith-based organizations with this announcement.

[1] Eligibility for refugee social services is limited to persons who meet all requirements of 45 CFR 400.43 (as amended by 65 F.R. 1540, March 22, 2000) including: (1) Cuban and Haitian entrants under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513). For convenience, the term ''refugee'' is used in this notice to encompass all such eligible persons.

Legislative Authority

This program is authorized by section 412(c)(1)(A) of the Immigration and Nationality Act (INA)(8 U.S. C. 1522(b)(5)), as amended, which authorizes the Director ''to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed-(i) to assist refugees in obtaining the skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other recertification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services.''

Funding Availability

ORR expects to award a total of $500,000 in discretionary social service funds through approximately three to five projects under Category 2—Unanticipated Arrivals ranging from $100,000 to $200,000 for a total of $500,000; and 6 to 12 projects under Category 4—Ethnic Community Self-Help ranging from $50,000 to $300,000 for a total of $3,000,000.

The Director of ORR reserves the right to award less, or more than the funds described in this announcement. In the absence of worthy applications, the Director may decide not to make an award if deemed in the best interest of the government. Funding availability for future years is at the Director's discretion.

CFDA Number—93.576

Eligible Applicants

For Categories 2 and 4, public and private nonprofit organizations are eligible to apply. Faith-based organizations are also eligible to apply under Categories 2 and 4. ORR expects that applicants in these Categories will coordinate in partnerships with other local organizations in considering projects and proposing services. Any private nonprofit organization submitting an application must submit proof of its nonprofit status at the time of submission. A nonprofit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or by providing a copy of the currently valid IRS tax exemption certificate.

An applicant may submit more than one application under this announcement, but must apply separately for each category.

Project and Budget Periods

ORR invites applications under Category 2 for a single 17-month budget period. Applicants should view these resources as a temporary solution to an immediate need created by unanticipated arrivals.

ORR invites applications under Category 4 for project periods of up to three years. Awards, on a competitive basis, will be for one-year budget periods. Applications for continuation grants, to extend activities beyond the one-year budget period, will be entertained on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government.

Category 2—Unanticipated Arrivals

Purpose and Objectives

The purpose ORR seeks to achieve through Category 2, Unanticipated Arrivals, is to provide additional resources to communities where the arrival of refugees is not anticipated and the refugee services are insufficient. Under these circumstances, resources are needed to provide additional service capacity to accommodate the additional refugees. Through Category 2—Unanticipated Arrivals—ORR intends to offer to communities the resources to respond to the unanticipated arrivals with adequate and culturally and linguistically appropriate social services.

Under Category 2, ORR invites applications that propose seventeen-month projects for a minimum of 100 refugees annually. Examples of situations for which applicants may request funds for grants under Category 2 are as follows: (1) The existing service system does not have culturally and linguistically compatible staff; (2) refugee services do not presently exist; or (3) the service capacity is not sufficient to accommodate significant increases in arrivals.

This grant program is intended to provide for services that respond to the needs of new refugee populations shortly after arrival into the community. Grantees should view these resources, therefore, as a *temporary* solution to insufficient services necessitating program adjustment because of the unanticipated arrival of a refugee population in a specific community. Therefore, planning for the application and implementation of the program must be done in concert with the State Refugee Coordinator to assure an orderly transition and complement of services. ORR's expectation is that, by the end of the grant project period, the State government will have incorporated services for these new populations into its refugee services network funded by ORR formula social service dollars. The transition of the services should be described in the last two quarterly performance reports.

Allowable Activities

Allowable activities in the unanticipated arrivals program are social services for refugees that are appropriate and accessible in language and culture. Services provided by all grantees, whether private or public, must comply with the regulations at 45 CFR 400.147, 400.150 (a), and 400.154–156 regarding priorities for services, eligibility for services, scope of services, and service requirements.

Applications under this section should indicate how the grantee will ensure that services are appropriate and accessible in language and culture.

Review Criteria

1. *Objectives and Need*—The application establishes that the unanticipated number of at least 100 refugees or more is significant relative to the resident population. The applicant documents the most recent 12-month period of refugee arrivals, both anticipated and unanticipated. The application includes a description of the need for services and how funding through the Unanticipated Arrivals program would meet those needs. The application, supported by a letter from the relevant voluntary agency headquarters, documents the planned projections of refugees for the next 12 months. (25 points)

2. *Approach*—The strategy and plan are likely to achieve the proposed results; the proposed activities and timeframes are reasonable and feasible. The plan describes in detail how the proposed activities will be accomplished as well as the potential for the project to increase the available services for unanticipated arriving refugees. Assurance is provided that proposed services will be delivered in a manner that is linguistically and culturally appropriate to the target population. Where coalition partners are proposed, the applicant has described each partner agency's respective role and financial responsibilities, and how the coalition will enhance the accomplishment of the project goals. The applicant has described the

planning consultation efforts undertaken. The State Refugee Coordinator indicated an interest in continuing these services to the Unanticipated Arrivals through their State formula social service funds. (20 points)

3. *Results or Benefits Expected*—The application clearly describes the project goals; appropriateness of the performance measures to the project activities; appropriateness of the performance outcomes and the results and benefits to be achieved. The application describes how the impact of the funds will be measured on key indicators associated with the purpose of the project. Proposed outcomes are measurable and achievable within the grant project period, and the proposed monitoring and information collection is adequately planned. (20 points)

4. *Organizational Profiles*—Individual organization staff, including volunteers, are well qualified. The administrative and management features of the project, including a plan for fiscal and programmatic management of each activity, is described in detail with proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, and a staffing chart. The applicant has provided a copy of its most recent audit report. Evidence of commitment of any coalition partners in implementing the activities is demonstrated, e.g., by Memorandum of Understandings (MOUs) among participants. (20 points)

5. *Budget and Budget Justification*—The budget and narrative justification are reasonable, clearly presented, and cost-effective in relation to the proposed activities and anticipated results. (15 points)

Category 4—Ethnic Community Self-Help

Purpose and Objectives

This program is to provide assistance to organized ethnic communities comprised of and representative of refugee populations. ORR's intended purpose is to build bridges among refugee communities and community resources. ORR is interested in applications from national, regional (multi-state), or local levels that address community building, cultural adjustment orientation, and mutually supportive functions such as information exchange, civic participation, and resource enhancement.

Respondents to this program category will be of two general types:

(1) Multi-site or national ethnic organizations which propose to develop or strengthen local ethnic groups and/or a national network of ethnic community entities for purposes of linking refugees to community resources; or,

(2) Emerging local ethnic communities which seek to function as bridges between refugees and mainstream local resources and organizations.

A community is self-sufficient when it has the capacity to generate and control its own resources, determine its own goals, set priorities, plan and mobilize community members, including the elderly, women and youth, to work together to achieve these goals, and to create collaborations with others from within and outside the community to further these goals.

ORR recognizes that one key to strengthening communities is the development of strong community based organizations (CBOs). A strong ethnic organization can tap into the community's desire for self-help, improve services, support leaders, attract various resources, explore housing and economic opportunities, collaborate with mainstream agencies and groups, and at the same time, remain accountable to the community.

Strong CBOs can also facilitate positive interaction between refugees and established residents in mainstream communities. The ability to organize and to voice their concerns collectively gives refugees a better sense of identity and hope for their own and their community's future. Refugee self-help groups can be important building blocks for effective resettlement and can function as bridges between the refugee community and local resources.

Many refugees who arrived in this country during the past century organized themselves around self-help in order to assist their own members, to foster long term community growth, to preserve their cultural heritage, and to assist community members in securing employment and other social services. Many refugees who have come to the United States in recent years have not yet organized; consequently, they may be experiencing barriers to accessing mainstream resources and full participation in the economic, social, and civic activities of the larger community. They are distinguished in part by a lack of information about the process of community organizing for self-help.

ORR has found that effective refugee self-help groups result in:

○ A shared, dynamic vision of the community's future which inspires members to work together to secure that future;

○ A perception of refugees not as needy recipients but as active partners in their integration into their communities;

○ A link between individual self-sufficiency and community self-reliance;

○ Local communities which apply their own cultural, civic, and socio-economic values to long term strategies and programs;

○ A role for refugees as decision-makers on community needs, program responses, and service delivery systems;

○ Local resources (generated through service delivery or economic development) that stay within the community; and

○ Collaboration among refugee and mainstream service providers, policy makers, and public and private institutions.

In recognition of the special vulnerability of newly arrived populations, ORR intends to provide support to refugee ethnic communities who have achieved significant populations in the United States within the last ten years. Awards will be based on the applicant's justification and documentation, including such factors as community service needs and available resources.

ORR expects applicants to match federal funds and to consider how they might document proposed receipt of funds from other (non-ORR) sources toward cost sharing of the project.[2] The requirement will be not less than 10% of the requested funding for the first year award, 15% for the second year award, and 25% for the third year award.

Allowable Activities

Successful national organization applicants to this notice may propose activities that may include, but are not limited to, the following:

- Organizing for self-help, leadership development and civic participation;
- Inspiring self-determination;
- Linking technical assistance and resources to local ethnic communities;

[2] ''Cost-sharing'' is used here to refer to any situation in which the grantee shares in the costs of a project. The term ''recipient contributions'' refers to costs borne by the grantee, either through cash outlay or the provision of services. ''In-kind contributions'' means the value of goods and/or services donated by third parties. Grantees are not considered as providing in-kind contributions. The cost-sharing or in-kind contribution costs are subject to the rules governing allowability in 45 CFR 74.23 or 92.24, including allowability under the applicable cost principles and conformance with other terms and conditions of the award that govern the expenditure of Federal funds.

• Supporting public education and agency linkage through an Internet site;
• Facilitating information dissemination on ethnic-specific issues; or
• Convening of national or regional meetings.

Successful local ethnic self-help applicants to this notice may propose any of the following activities:
• Public education activities designed to inform the refugee community about issues essential to functioning effectively in the new society;
• Orientation and assistance to parents in connecting with school systems and other local public or private institutions;
• Dissemination of information on access to community health and mental health services, including health care for the uninsured, health insurance, health maintenance organizations, the importance of preventive health, required immunizations, and available universal coverage;
• Pairing refugee individuals or families with community volunteers;

Information and training on the roles of men and women in the U.S. culture; such as:
• Information on healthy marriage education programs and partnerships with healthy marriage community and faith-based programs;
• Information on laws regarding child welfare, child abuse and neglect;
• Information on sexual harassment and coercion, and domestic violence;
• Bilingual staff assistance for women's shelters, and
• Techniques for self-protection;
• Activities designed to improve relations between refugees and the law enforcement communities;
• Community training for such activities as civic organizing, resource strategies, and non-profit management.
• Employment and training related services.

The above are examples of services. Applicants may propose other relevant services and may request funds to cover core or general operating expenses. In all instances, however, activities must be designed to supplement, rather than to supplant, the existing array of refugee services available in the community.

Applicants must give assurance that their governing bodies, boards of directors, or advisory bodies are knowledgeable and responsive to refugee concerns. This can be demonstrated through majority refugee representation on these bodies or through some other way. Women should be included on these representative bodies, as well.

Planning and coalition-building should be guided by the overarching goal of improving the economic condition of refugee families and of giving them the information needed to achieve social and civic integration into their new country and their new communities.

Non-Allowable Activities

Funds will not be awarded to applicants for the purpose of engaging in activities of a distinctly political nature, activities designed exclusively to promote the preservation of a specific cultural heritage, or activities with an international objective (i.e., activities related to events in the refugees' country of origin).

Review Criteria—Listed According to UPD Order

1. *Objectives and Need for Assistance*—The applicant clearly describes the need for ethnic organizing in the community proposed and documents an understanding of the distinguishing characteristics of the relevant ethnic group. The principal and subordinate objectives are clearly stated; supporting documentation, such as letters of support from concerned interests are included. The applicant describes in detail how the ethnic community has been involved in the project planning, how project participants are identified, and provides evidence of their support for the plan of action. Planning studies incorporating demographic data and participant information are referenced or included as needed. (15 points)

2. *Approach*—The strategy and plan is likely to achieve the proposed results; the proposed activities and timeframes are reasonable and feasible. The reason for taking the proposed approach to community organizing is adequately described. Proposed activities are likely to lead to desired outcomes, and the project is likely to lead to increased ethnic community self-help. (25 points)

3. *Results or Benefits Expected*—The applicant describes outcomes which are likely to be reached through community organizing. Two or more key indicators associated with ethnic community self-help are provided as measures of the impact of the proposed project. Proposed outcomes are measurable and achievable within the grant project period, and the proposed monitoring, information collection, and documentation are adequately planned. (20 points)

4. *Organizational Profiles*—Individual organization staff, including volunteers, proposed partners and consultants, if any, are well qualified. The administrative and management features of the project, including a plan for fiscal and programmatic management of each activity, is described in detail with proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, and a staffing chart. The applicant has provided a copy of its most recent audit report or fiscal management plan. If appropriate, written agreements between grantees and sub-grantees or other cooperating entities, detailing work to be performed, remuneration, and other terms and conditions that structure or define the relationship to this project, are provided. (25 points)

5. *Budget and Budget Justification*—The budget and narrative justification are reasonable, clearly presented, and cost-effective in relation to the proposed activities and anticipated results. The cost-sharing plan is likely to be achieved and is appropriate to the overall funding request, and the level of activity—national or local. (15 points)

Part II: The Review Process

Intergovernmental Review—This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

* All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-eight jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date

of this submittal (or indicate ''not applicable'' if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: ORR Grants Officer, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade SW., 4th floor, Washington, DC 20447.

A list of the Single Points of Contact for each participating State and Territory can be found on the web at: *http://www.whitehouse.gov/omb/index.html.*

Initial ACF Screening—Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

Competitive Review and Evaluation Criteria—Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of evaluation criteria specified in Part I. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the evaluation criteria within the context of this program announcement.

Applications received for each Category will be scored and ranked only within the Category designated on the SF 424, e.g. in one of the two program areas.

Part III: The Application

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Selected elements of the ACF Uniform Project Description (UPD) relevant to this program announcement are attached as Appendix A.

Application Forms—Applicants for financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF 424A, Budget Information'Non-construction Programs; SF 424B, Assurances'Non-Construction Programs. The forms may be reproduced for use in submitting applications. Application materials including forms and instructions are available from the Contact named in the preamble of this announcement and from the ORR website.

Application Submission And Deadlines—An application with an original signature and two clearly identified copies is required. Applicants must clearly indicate on the SF424 the Category under which the application is submitted.

The closing date for submission of applications is July 5, 2002.

Mailed applications postmarked after the closing date will be classified as late. Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Attention: Daphne Weeden, Grants Officer, 370 L'Enfant Promenade SW., 4th Floor, Washington, DC 20447.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 4th Floor, Aerospace Building, 901 D Street, SW., Washington, DC 20447 between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note ''Attention: Grants Officer.'' (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

For Further Information on Application Deadlines Contact: Daphne Weeden, Grants Officer, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade SW., 4th Floor, Washington, DC 20447, Telephone: (202) 401–4577.

Certifications, Assurances, And Disclosure Required For Non Construction Programs—Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a signed certification regarding lobbying with their applications, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying.

Applicants must make the appropriate certification of their compliance with the Drug Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification

need not mail back the certification with the applications.

General Instructions for Preparing a Full Project Description

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested. Please refer to the UPD sections in the appendix.

Length of Applications—Each application narrative should not exceed 20 pages in a 12-pitch font. Attachments and appendices should not exceed 25 pages and should be used only to provide supporting documentation such as administration charts, position descriptions, resumes, and letters of intent or partnership agreements. A table of contents and an executive summary should be included but will not count in the page limitations. Each page should be numbered sequentially, including the attachments or appendices. This limitation of 20 pages per program area should be considered as a maximum, and not necessarily a goal. Application forms are not to be counted in the page limit.

Please do not include books or videotapes as they are not easily reproduced and are, therefore, inaccessible to the reviewers.

Part IV: Post-Award

Applicable Regulations—Applicable DHHS regulations can be found in 45 CFR part 74 or 92.

Treatment of Program Income—Program income from activities funded under this program may be retained by the recipient and added to the funds committed to the project, and used to further program objectives.

Reporting Requirements—Grantees are required to file the Financial Status Report (SF–269) semi-annually and the Program Performance Reports submitted semi-annually, along with the Schedule C of the ORR Performance Report. Category Four grantees should note that Program Performance Reports are due quarterly.

Funds issued under these awards must be accounted for and reported under the distinct grant number ascribed. Although ORR does not expect the proposed projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes and expenditures. The official receipt point for all reports and correspondence is the ORR Grants Officer, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade SW., 4th Floor, Washington, DC 20447, Telephone: (202) 401–4577. An original and one copy of each report shall be submitted within 30 days of the end of each reporting period directly to the Grants Officer.

A final Financial and Program Report shall be due 90 days after the project expiration date or termination of Federal budget support.

Dated: May 22, 2002.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

Appendix A—Uniform Project Description OMB No. 0970–0139

The project description is approved under OMB control number 0970–0139 which expires 12/31/03.

Part I: The Project Description Overview

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

Part II: General Instructions for Preparing a Full Project Description

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Third-Party Agreements

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application *OR* by application deadline.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.) *Justification:* For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 USC 403(11) currently set at $100,000. Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Nonfederal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total Project Costs.

[Self-explanatory]

[FR Doc. 02–13891 Filed 6–3–02; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–16]

Notice of Proposed Information Collection: Emergency Comment Request; HUD's Loss Mitigation Default Counseling Program Demonstration

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: June 11, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number (pending) and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to the documentation method to verify the voucher for reimbursement which will be used in HUD's Loss Mitigation Default Counseling Demonstration Program. Each of the Housing Counseling Agencies (HCAs) that are participating in the Demonstration will be eligible to be reimbursed each time a completed Loss Mitigation package is referred to one of the four lenders participating in the Demonstration. Each referral must be documented by the HCAs through a voucher form. HUD will reimburse the lender for each paid counseling claim. A single response to the information collection requirement would be required per default counseling referral.

HUD's Loss Mitigation Default Counseling Demonstration offers one way to address the HCAs' chronic shortage of default counselors, the Department's need to test the effectiveness of early default intervention, provide counseling on predatory lending avoidance, and increase workouts in high default areas. The necessity for immediate use of new information collection requirements, which includes the use of a voucher form, is a critical factor to helping stabilize defaulted homeowners and reducing claim losses to FHA. HUD is requesting that OMB approves this information collection by June 10, 2002.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title Of Proposal: HUD's Loss Mitigation Default Counseling Demonstration.

OMB Control Number: 2502—NEW.

Agency Form Numbers: None.

Members Of Affected Public: Four lenders participating in the Demonstration, the HUD approved Housing Counseling Agencies participating in this Demonstration.

ESTIMATION OF THE TOTAL NUMBERS OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSES, AND HOURS OF RESPONSE

Number of respondents	Number of responses per respondent	Frequency of responses	Number of responses	Hours per response	Estimated annual burden (in hours)
*11	**749	Monthly	8,240	0.50	4,120

*The number of parties: 4 lenders have volunteered to participate in this Demonstration and 7 Housing Counseling Agencies. Each will have dedicated staff assigned to work on this Demonstration.

**The actual burden on respondents varies widely because of the different levels of activity and size of FHA portfolio held by respondents.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 29, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–13922 Filed 6–3–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–19]

Notice of Submission of Proposed Information Collection to OMB, Quarterly Loan Level Reporting

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due date:* July 5, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2503–0026) should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Joseph_F.__Lackey__Jr@OMB.EOP.GOV*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20419; e-mail *Wayne Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the Office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Quarterly Loan Level Reporting

OMB Approval Number: 2503–0026

Form Numbers: None

Description of the Need for the Information and Its Proposed Use:

Ginnie Mae issuers are required to submit loan level data quarterly for all pooled loans and loan packages. The report contains all loans that were not liquidated as of the close of the month for which data is presented. As of 1999, this data has been submitted by electronic data interchange (EDI), and is processed through a program module in the Mortgage-Backed Securities Information System (MBISIS).

Respondents: Business or other for-profit, Federal Government.

Frequency of Submission: Quarterly.

Reporting Burden:

Number of respondents	Annual responses	×	Hours per response	=	Burden hours
296	4		4		4,736

Total Estimated Burden Hours: 4,736.

Status: Reinstatement, without change.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 29, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Office.

[FR Doc. 02–13924 Filed 6–3–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Central Arizona Project, Arizona; Water Allocations

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of proposed modification to the Secretary of the Interior's record of decision

SUMMARY: The Department proposes to modify the 1983 Central Arizona Project (CAP) Water Allocation Decision to delete the mandatory effluent pooling provision. The Department now views that provision as an impediment to effluent exchanges and effective water management in central Arizona.

If the proposed decision is implemented, the Department would amend water service subcontracts for the cities of Chandler and Mesa to remove the mandatory effluent pooling provision. The mandatory effluent pooling provision would be deleted from other M&I water service subcontracts upon request.

DATES: All comments and material relevant to this proposed decision that are received by July 5, 2002 will be considered.

ADDRESSES: Send written comments concerning the proposed decision to Paul Nelson, Bureau of Reclamation, PO Box 81169, Phoenix, Arizona, 85069–1169.

FOR FURTHER INFORMATION CONTACT: Paul Nelson at (602) 216–3878.

Proposed Decision: The following sentence is proposed for deletion from the 1983 CAP Water Allocation Decision (see page 12447 of the 1983 CAP Water Allocation Decision): ''This allocation is subject to the adoption of a pooling concept whereby all M&I allottees share in the benefits of effluent exchanges.''

SUPPLEMENTARY INFORMATION:

I. Previous Notices Related to CAP Water
II. Background
III. Rational for Proposed Decision
IV. Compliance with the National Environmental Policy Act of 1969 (NEPA)

I. Previous Notices Related to CAP Water

Previous notices related to CAP water were published in the **Federal Register** (FR) at 37 FR 28082, December 20, 1972; 40 FR 17297, April 18, 1975; 41 FR 45883, October 18, 1976; 45 FR 52938, August 8, 1980; 45 FR 81265, December 10, 1980; 48 FR 12446, March 24, 1983; 56 FR 29704, June 28, 1991; 57 FR 4470, February 5, 1992; and 57 FR 48388, October 23, 1992. These notices and decisions were made pursuant to the authority vested in the Secretary by the Reclamation Act of 1902 as amended and supplemented (32 Stat. 388, 43 U.S.C. 391), the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501) and in recognition of the Secretary's trust responsibility to Indian tribes.

II. Background

Following the 1983 CAP Water Allocation Decision, the Bureau of Reclamation, the Central Arizona Water Conservation District (CAWCD), and each of the non-Indian CAP water allottees desiring CAP water entered into three-party water service subcontracts providing for the delivery of CAP water. In order to ensure implementation of the mandatory effluent pooling provision, M&I water service subcontractors who choose to circumvent the effluent pooling provision and directly exchange their effluent with Indian tribes are subject to a reduction in their entitlement to CAP water under their subcontracts by the amount of CAP water received from the effluent exchange.

The Department indicated in the 1983 CAP Water Allocation Decision that CAP M&I water allocations could be made more firm by execution of feasible non-potable effluent exchanges with Indian tribes. The 1983 CAP Water Allocation Decision also implemented a pooling provision whereby all M&I water service subcontractors share in the benefits of effluent exchanges. In a time of shortage of CAP water under the effluent pooling provision, the additional CAP water made available as a result of any effluent exchanges with Indian tribes would be shared by all M&I subcontractors, thereby reducing the amount of shortage for each subcontractor. The pooling provision was included in the CAP M&I water service subcontracts.

The 1983 CAP Water Allocation Decision also provided that the Department could require Indian tribes located in close proximity to metropolitan areas to take delivery of effluent in lieu of CAP water. This requirement was eliminated by a Secretarial decision published in the **Federal Register** on October 23, 1992, so that any effluent exchanges involving Indian tribes would occur on a voluntary basis.

The major cities in Maricopa County, which are the sources of most of the exchangeable effluent, prefer to exchange effluent on their own, incur all related treatment and transportation expenses, and receive any benefits from the exchange.

III. Rationale for Proposed Decision

The Department favors elimination of the mandatory effluent pooling provision from the 1983 CAP Water Allocation Decision for the following reasons:

(1) In response to public comments submitted by the City of Phoenix in 1992 concerning the mandatory effluent pooling provision, the Department committed to re-evaluate this provision at a later date after consultation with the Arizona Department of Water Resources (ADWR) (see 57 FR 48389). In pertinent part, the City of Phoenix stated ''* * * The City of Phoenix agrees with the reasons for deleting the mandatory substitute water provision from the Indian CAP Contracts and believes that it is equally important to remove the provision from CAP M&I subcontracts that would penalize a subcontractor for entering into a direct effluent exchange with an Indian Community for CAP water.'' The Department acknowledged the City of Phoenix's concerns that the provisions of the effluent exchange article in the CAP M&I water service subcontracts may no longer be critical to the management of water supplies in central Arizona.

(2) The mandatory effluent pooling provision removes any incentive for a municipality to exchange effluent with an Indian tribe. The Department believes that effluent producing entities, Indian Tribes, the State of Arizona, and other local organizations should be free to pursue local water management decisions that are in the best interest of the local economies, and that they should not be constrained in such water management decisions by the mandatory effluent pooling provision.

(3) ADWR now supports removing the mandatory effluent pooling provision from the 1983 CAP Water Allocation Decision and the CAP M&I water service subcontracts.

(4) CAWCD, as a party to the CAP M&I water service subcontracts, does not object to deletion of the mandatory effluent pooling provision from the subcontracts.

(5) The Department is aware of two pending effluent exchange agreements that require Departmental approval. The cities of Chandler and Mesa each have a proposed effluent exchange agreement with the GRIC. The benefits resulting from the proposed exchanges to the cities and GRIC will not occur unless and until the mandatory effluent provision is removed from the Cities' CAP water service subcontracts.

IV. Compliance with the National Environmental Policy Act of 1969 (NEPA)

The Department has prepared an Environmental Assessment (EA) on the impact of modifying the 1983 CAP Water Allocation Decision to delete the

mandatory effluent pooling provision. The draft EA and notice of availability are being published and disseminated to CAP water contractors and subcontractors and other interested parties concurrent with publication of this notice.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: May 24, 2002.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 02–13888 Filed 6–3–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by July 5, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Daryl Lyn Sittig, Crystal Lake, IL, PRT–056299.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Darwin W. Lamb, Cedar City, UT, PRT–057342.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Brian Casey Harrison, Kennedale, TX, PRT–057364.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Paul B. Wilson, Macungie, PA, PRT–057341.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Montana Rocosa Ranch, Utopia, TX, PRT–056130.

The applicant requests a permit to authorize interstate and foreign commerce, export and cull of excess animals for the following species: Arabian oryx (*Oryx leucoryx*), swamp deer (*Cervus duvauceli*), Eld's deer (*Cervus eldii*) and red lechwe (*Kobus leche*) from their captive-raised herd for the purpose of enhancement of the survival of the species. This notification covers activities conducted by the applicant over a three year period. Permittee must annually apply for renewal.

Applicant: Zoological Society of San Diego/San Diego Zoo, San Diego, CA, PRT–056991 and 057398.

The applicant requests a permit to export (PRT–056991) 2.6 captive-born California condors (*Gymnogyps californianus*) for the purpose of enhancement of the survival of the species through reintroduction to Sierra San Pedro Martir, Baja California, Mexico. The second application is for the possible re-import (PRT–057398) of same animals to Zoological Society of San Diego if the re-import is found to be essential due to emergencies such as a medical condition or behavioral problems.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Lanny S. Rominger, Albuquerque, NM, PRT–057343.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Garry M. Betrus, Fenton, MI, PRT–057437.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: May 23, 2002.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–13929 Filed 6–3–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the information collection request for Student Transportation Mileage Form, OMB Control # 1076–0134, requires renewal. As required by the Paperwork Reduction Act, we request your comments on this collection before submission to the Office of Management and Budget.

DATES: Written comments must be submitted on or before August 5, 2002.

ADDRESSES: Submit comments to William Mehojah, Director, Office of Indian Education Programs, Department of the Interior, Bureau of Indian Affairs, 1849 C Street NW, Mail Stop 3512–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Joe D. Herrin, (202)–208–7658

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to provide transportation mileage for Bureau-funded schools which will receive an allocation of transportation funds.

II. Method of Collection

The Student Transportation regulations in 25 CFR part 39, subpart H, contain the program eligibility and criteria which govern the allocation of transportation funds. Information collected from the schools will be used to determine the rate per mile.

III. Data

Title of the Collection of Information: Student Transportation Form, 25 CFR 39, Subpart H; OMB Control Number 1076–0134.

Type of Review: Renewal of a currently approved information collection.

Summary of the Collection of Information: This collection provides pertinent data concerning the schools' bus transportation mileage and related long distance travel mileage to determine funding for school transportation.

Affected Entities: Contract and Grant Schools; Bureau operated schools. About 116 tribal school administrators annually gather the necessary information during student count week.

Estimate of total annual reporting and record keeping burden: At an average of 6 hours each ''121 reporting schools = 726 hours.

Total annual cost burden: 726 hours × $20/hour = $14,520.

IV. Request for Comments

The Department of the Interior invites comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information; the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection on the respondents, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, and disclosing and providing information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Comments submitted in response to this notice will be summarized and/or included in the submission of the collection to OMB for approval and renewal of this information collection. They become a matter of public record. If you wish to have your name and address withheld for any reason, you must state so prominently at the beginning of your comments. We will honor your request to the extent allowable by law. Anonymous comments will not be used.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget Control Number.

Dated: May 22, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–13928 Filed 6–3–02; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use and Distribution of the Red Lake Band of Chippewa Indians Judgment Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the plan for the use and distribution of the Red Lake Band of Chippewa Indians (Tribe) judgment funds is effective as of April 28, 2002. The judgment funds were awarded by the United States Court of Federal Claims in Docket 189–C, and appropriated on February 23, 2001. The plan also provides for the use and distribution of escrow funds that remain from funds awarded to the Tribe in Dockets 189–A and 189–B. The funds were held in escrow for the repayment of expert assistance loans made to the Tribe by the Bureau of Indian Affairs. Congress waived the repayment of these loans under Section 813 of Title VIII of the Act of December 27, 2000, Pub. L. 106–568, 114 Stat. 2868.

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, MS–4631–MIB, 1849 C Street, NW, Washington, DC 20240. Telephone number: (202) 208–2475.

SUPPLEMENTARY INFORMATION: The plan for the use and distribution of the funds was submitted to Congress on December 20, 2001. The receipt of the plan was recorded in the Congressional Record published on December 20, 2001. The plan became effective on April 28, 2002, since a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan

For the Use and Distribution of Red Lake Band of Chippewa Judgment Funds in Docket 189–C and the Escrow Funds Remaining in Dockets 189–A and 189–B

The funds appropriated on February 23, 2001, in satisfaction of an award granted to the Red Lake Band of Chippewa Indians of the Red Lake Reservation in Minnesota (Tribe) in Docket 189–C, plus funds that were held in escrow for the payment of litigation expenses from the funds appropriated

on September 27, 1997, in Dockets 189–A and 189–B before the United States Court of Federal Claims (Court), including all interest and investment income accrued, less attorney fees and litigation expenses, shall be distributed as herein provided.

(A) Programming

The programming funds shall be allocated by the Tribe for the following projects:

Permanent Trust Fund Capitalization: A permanent non-expendable privately invested account in the sum of $40,000,000 shall be established by the Tribe. The interest earned on those funds (starting from the date the funds are transferred to the Tribe and the investment account is created) shall be available to implement the Red Lake Indian Reforestation Plan (Reforestation Plan) that was attached as Exhibit ''A'' to the Joint Motion for Entry of Stipulated Judgment and approved by the Court on January 16, 2001. The Reforestation Plan may be modified by the Tribe in consultation with, and with the approval of the Secretary of the Interior.

Litigation Costs.[1] The sum of $7,525,657 shall be available for attorney fees and litigation expenses incurred by the tribe in Dockets 189–A, B, C, and 388–82L. This amount includes the funds necessary to cover a debt forgiveness bill in the sum of $15,405, and the fees that were awarded to the Tribe by the court order dated April 18, 2001. If and when the Tribe receives the additional funds, those funds will be allocated to the Tribe's general fund.

Land Restoration Fees and Expenses: The Tribe has incurred costs for land restoration fees and expenses. The sum of $680,578 shall be available to reimburse the Tribe for costs incurred up until the date the plan becomes effective, and to pay the estimated cost of future land restoration fees and expenses.

(B) Per Capita Distribution

The remaining funds, estimated to be $10,423,000, shall be distributed in the form of per capita payments (in sums as equal as possible) to all persons who were born on or prior to and living on July 31, 2001, and who are enrolled members of the Red Lake Band of Chippewa Indians.

The per capita shares of living competent adults shall be paid directly to them, with the exception that the per capita shares of nursing home residents and incarcerated persons shall be paid into Individual Indian Money accounts for withdrawal upon application. The per capita shares of deceased individual beneficiaries shall be determined in accordance with 43 CFR, part 4, subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in 25 U.S.C. 1403(b)(3), except that by Order of the Red Lake Tribal Court, minors' funds may be withdrawn for damages, reparations or restitutions to victims of crime.

(C) General Provisions

The programming portion of the judgment funds shall be disbursed to the Tribe within 60 days of the effective date of the plan, except that the litigation fees and expenses shall be available to the Tribe for disbursement prior to the effective date of the plan, as authorized under 25 U.S.C. 1401. Once the program funds are disbursed to the Tribe, the United States Government shall no longer have any trust responsibility for the investment, supervision, administration, or expenditure of the program portion of the judgment funds. The Tribe shall prepare an annual accounting of each of the program activities under the programming portion of this judgment fund distribution plan. The accounting report shall be made available to the tribal members and to the Secretary of the Interior.

The Secretary, in arranging for per capita payments to be made, shall withhold sufficient shares for individuals whose eligibility may be in question. Those shares shall be held in a separate interest-bearing account pending determination of enrollment appeals. Funds not used to pay shares and pro rata interest to successful applicants, plus any other residual balances shall be disbursed to the tribe and allocated to the Tribe's general fund.

None of the funds distributed per capita or made available under this plan for programming shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act, or except for per capita shares in excess of $2,000 any Federal or federally assisted programs.

This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Dated: May 24, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–13926 Filed 6–3–02; 8:45 am]

BILLING CODE 4310–4J–P

[1] Litigation Costs: The attorney fees and litigation expenses that were advanced by the Tribe from tribal funds during the litigation of these claims is a qualified litigation expense under the terms of 25 U.S.C. that can and should be reimbursed to the Tribe from the judgment prior to the effective date of the plan. The Tribe can also advance $3,601,573.38 for payment of attorney fees that were awarded by the Court in the order dated April 18, 2001. The $3.6 million is included in the $7.5 million earmarked for litigation costs.

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

California Bay-Delta Public Advisory Committee Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the California Bay-Delta Public Advisory Committee will meet on June 27, 2002. The agenda for the Committee meeting will include reports from subcommittees, discussions on future governance, funding and budgets, and water operations, regional reports, and implementation of the CALFED Bay-Delta program with State and Federal officials.

DATES: The meeting will be held Thursday, June 27, 2002 from 9:00 a.m. to 4:00 p.m. If reasonable accommodation is needed due to a disability, please contact Pauline Nevins at (916) 657–2666 or TDD (800) 735–2929 at least 1 week prior to the meeting.

ADDRESSES: The meeting will be held at the Point Restaurant located at 120 Marina Drive, Rio Vista, California.

FOR FURTHER INFORMATION CONTACT: Eugenia Laychak, CALFED Bay-Delta Program, at (916) 654–4214, or Diane Buzzard, U.S. Bureau of Reclamation, at (916) 978–5022.

SUPPLEMENTARY INFORMATION: The Committee was established to provide assistance and recommendations to Secretary of the Interior Gale Norton and California governor Gray Davis on implementation of the CALFED Bay-Delta Program. The Committee will advise on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem restoration, water quality, levee system integrity, and water supply reliability. The Program is a consortium of 23 State and Federal agencies with the mission to

develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee and meeting materials will be available on the CALFED Bay-Delta Web site: *http://calfed.ca.gov* and at the meeting. This meeting is open to the public. Oral comments will be accepted from members of the public at the meeting and will be limited to 3–5 minutes.

(*Authority:* The Committee was established pursuant to the Department of the Interior's authority to implement the Fish and Wildlife Coordination Act, 16 U.S.C. 661 et. seq., the Endangered Species Act, 16 U.S.C. 1531 et. seq., and the Reclamation Act of 1902, 43 U.S.C. 371 et seq., and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws, and in particular, the Central Valley Project Improvement Act, Title 34 of Pub. L. 102–575.)

Dated: May 14, 2002.

John F. Davis,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 02–13884 Filed 6–3–02; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–937 (Final)]

Certain Structural Steel Beams From Italy

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On May 20, 2002, the Department of Commerce published notice in the **Federal Register** of a negative final determination of sales at less than fair value in connection with the subject investigation (67 FR 35481). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping investigation concerning certain structural steel beams from Italy (investigation No. 731–TA–937 (Final)) is terminated.

EFFECTIVE DATE: May 20, 2002.

FOR FURTHER INFORMATION CONTACT: D.J. Na (202–708–4727), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server *(http://www.usitc.gov).* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

Issued: May 30, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–13909 Filed 6–3–02; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 28, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E-Mail *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Type of Review: Revision of a currently approved collection.

Title: Permissible Equipment Testing.

OMB Number: 1219–0066.

Affected Public: Business or other for-profit.

Number of Respondents: 592.

Requirement	Annual responses	Average response time (hours)	Annual burden hours
Part 15—Requirements for Approval of Explosives and Sheathed Explosives Units			
New Acceptance Application	1	5.03	5
Acceptance Extension Application	1	5.03	5
Reporting Non-compliant Products	4	0.25	1
Part 15 Subtotal	6		11
Part 18—Electrical Motor Driven Mine Equipment and Accessories			
Approval Applications	84	14.43	1,212
Approval Extensions	32	5.16	165

Requirement	Annual responses	Average response time (hours)	Annual burden hours
Certification Application	1	14.43	14
Certification Extension	1	5.16	5
Simplified Certifications	1	7.00	7
Simplified Certifications Extensions	1	2.50	3
RAMP Applications	354	1.00	354
Part 18 Subtotal	474	.....	1,760
Part 19—Electric Cap Lamps			
Approval Applications	1	14.73	15
Approval Extension	1	5.03	5
RAMP Applications	1	1.48	1
Part 19 Subtotal	3	.....	21
Part 20—Electric Mine Lamps Other Than Standard Cap Lamps			
Approval Applications	3	14.73	44
Approval Extension	1	5.03	5
RAMP Applications	1	1.48	1
Part 20 Subtotal	5	.....	51
Part 22—Portable Methane Detector			
Approval Applications	1	14.73	15
Approval Extension	1	5.03	5
RAMP Applications	15	1.48	22
Part 22 Subtotal	17	.....	42
Part 23—Telephones and Signaling Devices			
Approval Applications	1	14.73	15
Approval Extension	1	5.03	5
RAMP Applications	3	1.48	4
Part 23 Subtotal	5	.....	24
Part 27—Methane Monitoring Systems			
Certification Application	1	14.73	15
Certification Extension	1	5.03	5
RAMP Applications	7	1.48	10
Part 27 Subtotal	9	.....	30
Part 28—Fuses for Use With Direct Current			
Approval Applications	1	14.73	15
Approval Extension	1	5.03	5
Part 28 Subtotal	2	.....	20
Part 33—Dust Collectors for Use in Connection With Rock Drilling in Coal Mines			
Approval Applications	7	14.73	103
Approval Extension	1	5.03	5
RAMP Applications	3	1.48	4
Part 33 Subtotal	11	.....	113
Part 35—Fire Resistant Hydraulic Fluids			
Approval Applications	1	24.25	24
Approval Extension	1	24.25	24
Part 35 Subtotal	2	.....	49
Part 36—Approval Requirements for Permissible Mobile Diesel-Powered Transportation Equipment			
Approval Applications	54	14.73	795
Approval Extension	1	5.03	5

Requirement	Annual responses	Average response time (hours)	Annual burden hours
RAMP Applications	3	1.48	4
Part 36 Subtotal	58		805
Grand Total	592		2,926

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $446,744.

Description: MSHA is responsible for quality control of mine equipment and components, materials, instruments, and explosives used in the mining industry. The information collection requirements contained in 30 CFR parts 15, 18, 19, 20, 22, 23, 27, 28, 33, 35, and 36 contain procedures by which manufacturers may apply for, and have equipment approved as permissible for use in mines.

Ira Mills,

Departmental Clearance Officer.

[FR Doc. 02–13859 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of May, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,421; Exide Technologies, Transportation Global Business A Unit. Shreveport, LA.
TA–W–41,235; Charmilles Technologies Manufacturing Corp., Owosso, MI
TA–W–41,278; Siegwerk, Inc., Lynchburg, VA
TA–W–41,321; Penn-Union Corp., Edinboro, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–41,292; Aerocell Structural, Hot Springs, AR
TA–W–41,411; Holiday Products, Inc., El Paso, TX
TA–W–40,537; Protel, Inc., Lakeland, FL

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,245; International Paper Containerboard and Kraft Div., Oswego, NY.
TA–W–41,255; American Greetings Corp., Corbin, KY
TA–W–39,600B; General Electric Industrial Systems, Magnetic Wire Div., Fort Wayne, IN
TA–W–41,191; Reflexite Display Optics, A Div. Of Fresnel Optics, Inc., Rochester, NY
TA–W–41,111; Invensys Climate Controls, Plastics Molding Div., Brownsville, TX
TA–W–40,330; Teasdale Tool Corp., Meadville, PA
TA–W–39,600B; General Electric Industrial Systems, Magnetic Wire Div., Fort Wayne, IN
TA–W–39,139; JDS Uniphase Corp. (Formerly Uniphase Corp), Lundy, Facility, (Formerly E Tek Dynamics), A Div. Of the WDM, Switching and Thin Film Products Group, San Jose, CA
TA–W–39,698; RHI America, Farber, MO
TA–W–40,882; Bassett Mirror Co., Bassett, VA
TA–W–40,894; Detroit Tool and Engineering Co., Lebanon, MO
TA–W–41,103; Metso Minerals Industries, Inc., Clintonville, WI
TA–W–41,023; Jabil Circuit, Inc., Meridian, OH

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–41,299; Smead Manufacturing, McGregor, TX
TA–W–41,142; SPX Valves and Controls, Lake City, PA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–39,600 & A; General Electric Industrial Systems, Motors Division, Fort Wayne, IN and Transformer Div., Fort Wayne, IN: June 21, 2000.
TA–W–40,391; Deck Brothers, Inc., Buffalo, NY: September 18, 2000.
TA–W–39,921; Guilford Mills, Inc., Lumberton, NC: July 18, 2000.
TA–W–39,397; Teleflex Morse, Inc, Formerly Known as Morse Controls, Hudson, OH: May 25, 2000.
TA–W–41,109; R.G. Knitting Mills, Inc., Woonsocket, RI: February 26, 2001.
TA–W–40,908; Tumi, Inc., Vidalia, GA: January 29, 2000.
TA–W–40,830; Wire Corporation of America, Inc., Kansas City, MO: January 16, 2001.
TA–W–41,003; Drexel Heritage Furnishings, Inc., Plant #1, Drexel NC: January 18, 2001.
TA–W–41,077 & A; Maloney Tool and Mold, Inc., Meadville, PA and Maloney Plastics, Inc., Meadville, PA: February 4, 2001.
TA–W–41,215; Birdair, Inc., Amherst, NY: March 11, 2001.
TA–W–41,349; Fayette Cotton Mill, Inc., Fayette, AL: March 11, 2001.
TA–W–41,339; Johnson Garment Corp., Marshfield, WI: March 28, 2001.
TA–W–41,293; Radiall, Inc., Stratford, CT: January 12, 2001.
TA–W–41,090; Regal Originals, Inc., New York, NY: February 5, 2001.
TA–W–40,671 & A,B; Isola Laminate Systems Corp., La Crosse, WI, Pendleton, SC and Hoosick Falls, NY: December 10, 2000.
TA–W–40,763; R.C.M. Manufacturing Co.,

River Falls Manufacturing Co., Division of S. Rothschild & Co., Fall River, MA: October 15, 2000.

TA–W–40,772; O-Cedar Brands, Inc., Standard Brush Div., Smallwares Department, Portland, In: January 31, 2001.

TA–W–40,799; Pinnacle Frames, Pocahontas, AR: January 11, 2001.

TA–W–41,027 & A; Centurion Wireless Technologies, Inc., Lincoln, NE and Westminster, CO: January 15, 2001.

TA–W–41,056; LTV Tubular Products Co./ LTV Copperweld, Youngstown, OH: February 8, 2001.

TA–W–39,478; Window Concepts, Inc., Wilson, NC: June 6, 2000.

TA–W–40,390; Carlisle Engineered Products, Lake City, PA: October 23, 2000.

TA–W–40,574; Heckett Multiserv, A Div. Of Harsco Corp., Employed at Geneva Steel, Provo, UT: November 30, 2000.

TA–W–40,603; Tiffany Knits, Inc., Schuykill Haven, PA: November 5, 2000.

TA–W–40,631; Skip's Cutting, Inc., American Dye and Finishing, TA–W–41,265; A.P. Green Industries, Inc., Including Leased Workers of Drexel Personnel Services, Middletown, PA: March 7, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), subchaper D, chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of May, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05034B; General Electric Industrial Systems, Magnetic Wire Div., Fort Wayne, IN

NAFTA–TAA–05087; RHI America, Farber, MO

NAFTA–TAA–05505; Bassett Mirror Co., Inc., Inc.

NAFTA–TAA–05663; Exide Technologies, Transportation Global Business Unit, Shreveport, LA

NAFTA–TAA–05787; Flextronics Enclosures, Smithfield, NC

NAFTA–TAA–05880; Victaulic Co. of America, Easton, PA

NAFTA–TAA–05893; Metso Minerals Industries, Inc., Clintonville, WI

NAFTA–TAA–05895; Jabil Circuit, Inc., Meridian, ID

NAFTA–TAA–05963A; Valeo Climate Control, Aluminum Tubing Line, USA–2 Div., Grand Prairie, TX

NAFTA–TAA–06031; H.J. Seagrott Co., Inc., Berlin, NY

NAFTA–TAA–05465; Teasdale Tool Corp., Meadville, PA

NAFTA–TAA–05934; Sheldahl, Inc., Northfield, MN

NAFTA–TAA–05944; Invensys Climate Controls, Plastics Molding Div., Brownsville, TX

NAFTA–TAA–06109; Gretagnacbeth, LLC A Sub. Of Amazys AG, New Windsor, NY

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–05972; Cummins Diesel Recon, Charleston, SC

NAFTA–TAA–05623; Protel, Inc., Lakeland, FL

NAFTA–TAA–06023; Aerocell Structures, Hot Springs, AR

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision including workers in any agricultural firm or appropriate sub-division thereof) did not become totally or partially separated from employment.

NAFTA–TAA–05128; Ambler Industries, A Subsidiary of Fishman and Tobin, Inc., Orangeburg, SC

Affirmative Determinations NAFTA-NAFTA–TAA

NAFTA–TAA–05963; Valeo Climate Control, USA–2, Division, Automotive Air Conditioning Condensers Line, Grand Prairie, TX: March 18, 2001.

NAFTA–TAA–05034 & A; General Electric Industrial Systems Motors Div., Fort Wayne, IN and Transformer Div., Fort Wayne, IN: June 22, 2000.

NAFTA–TAA–05859 & A; Schott Corp., Minnesota Plant, Jefferson, MN and Canby Plant, Canby, MN: February 14, 2001.

NAFTA–TAA–05933; Comdial Corp., Telecom, Charlottesville, VA: March 5, 2001.

NAFTA–TAA–05945; Dunham-Bush, Inc., Harrisonburg, VA: January 30, 2001.

NAFTA–TAA–05996 & A; Riverside Paper Corp., Riverside Paper Co., Appleton, WI and Kerwin Paper Mill, Appleton, WI: March 20, 2001.

NAFTA–TAA–06021; Aspen Trailer, Inc., Litchfield, MN: March 19, 2001.

NAFTA–TAA–05896; Brach Confections, Inc., Chicago, IL: February 25, 2001.

NAFTA–TAA–05917; Kraft Foods, Cereals/ Desserts Div., Minneapolis, MN: February 26, 2001.

NAFTA–TAA–06006; Braden Manufacturing, LLC, Fort Smith, AR: March 25, 2001.

NAFTA–TAA–06008; Howmet Castings, City of Industry, CA: March 21, 2001.

NAFTA–TAA–06038; Birdair, Inc., Amherst, NY: March 11, 2001.

I hereby certify that the aforementioned determinations were issued during the month of May, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 28, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–13939 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,590]

Alfa Laval Inc.; Formerly Known as Tri-Clover, Kenosha, Wisconsin; Notice of Negative Determination Regarding Application for Reconsideration

By application of February 21, 2002, the International Association of Machinists and Aerospace Workers, Lodge 34 requested administrative reconsideration of the Department's negative determination regarding

eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on January 22, 2002, and published in the **Federal Register** on February 5, 2002 (67 FR 5293).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition, filed on behalf of workers at Alfa Laval Inc., formerly known as Tri-Clover, Kenosha, Wisconsin producing fittings, valves and pumps was denied because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that increased imports did not contribute importantly to worker separations at the subject firm during the relevant period. The investigation further revealed that during 2000, Tri-Clover was acquired by a company that also owned Alfa Laval. As both companies produced similar product lines, a strategic business decision was made to consolidate production among multiple facilities. Thus declines in sales, production and employment were attributable to eliminating excess capacity. Plant production of valves and pumps were scheduled to be shifted to other domestic locations during mid2002. Plant production of fittings was transferred to a foreign source, but was not imported back to the United States during the relevant period. The petitioner appears to be alleging that shifts in subject plant production of fittings to a foreign source occurred and that plant production of valves and pumps will be shifted to foreign sources in the near future, therefore the workers of the subject plant should be considered eligible for TAA.

An examination of the initial investigation revealed that shifts in production (fittings) at the subject firm have occurred. The other products (valves and pumps) produced at the subject firm were scheduled to be shifted during mid2002. The shifts in production (also outsourcing) to foreign sources is not relevant to meeting criterion (3) of the Trade Act of 1974. The products produced by the subject firm would have to be imported back into the United States and also must ''contribute importantly'' to the layoffs at the subject firm for the worker groups engaged in producing fittings, valves and pumps to be certified eligible to apply for TAA. No such evidence was provided to show that this occurred during the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–13942 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,471]

Besser Co., Alpena Michigan; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of January 4, 2002, the International Brotherhood of Boilermakers, Local Lodge D–472 requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on November 27, 2001, and published in the **Federal Register** on December 18, 2001 (66 FR 65220).

The Department reviewed the request for reconsideration and has determined that the Department will examine the petitioner's allegation claiming that the Department did not survey a representative sample of the subject firm's customer base.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 26th day of April, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–13940 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,647]

Biltwell Clothing Co., Farmington, Missouri; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 28, 2002 in response to a worker petition, which was filed by the company on behalf of workers at Biltwell Clothing Co., Farmington, Missouri.

An active certification covering the petitioning group of workers remains in effect (TA-W–39,244). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 3rd day of May, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–13943 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,525, TA–W–40,525E, and TA–W–40,525F]

The Boeing Company Commercial Airplane Group, Seattle, Washington, Corinth, Texas, and Irving, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on March 18, 2002, applicable to workers of The Boeing Company, Commercial Airplane Group, Seattle, Washington. The notice was published in the **Federal Register** on March 29, 2002 (67 FR 15226).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The

workers are engaged in the production of large commercial aircraft and the components thereof.

Company information shows that worker separations occurred at the Corinth, Texas and Irving, Texas locations of the Commercial Airplane Group of The Boeing Company. These workers produce commercial aircraft components such as wire harnesses and avionics—flight deck controls and black boxes, respectively.

Accordingly, the Department is amending this certification to include workers of the Corinth, Texas and Irving, Texas locations of The Boeing Company, Commercial Airplane Group.

The intent of the Department's certification is to include all workers of The Boeing Company, Commercial Airplane Group who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,525 is hereby issued as follows:

''All workers of The Boeing Company, Commercial Airplane Group, Seattle, Washington (TA–W–40,525), Corinth, Texas (TA–W–40,525E) and Irving, Texas (TA–W–40525F) who became totally or partially separated from employment on or after February 25, 2002, through March 18, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 26th day of April, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–13937 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,396]

Carter Industries, Inc., Brooklyn, New York; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Carter Industries, Inc., Brooklyn, New York. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–39,396; Carter Industries, Inc. Brooklyn, New York (May 20, 2002).

Signed at Washington, D.C. this 18th day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–13932 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,353]

Dynamic Details, LP, a Division of Dynamic Details, Inc., Garland, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 13, 2001 in response to a worker petition, which was filed by the company on behalf of workers at Dynamic Details, LP, a division of Dynamic Details, Inc., Garland, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 6th day of May, 2002.

Linda G. Poole

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–13941 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,346]

Electronic Data Systems, Camp Hill, Pennsylvania; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 15, 2002, in response to a petition filed on behalf of workers at Electronic Data Systems, Camp Hill, Pennsylvania.

There is an existing petition investigation in process for workers of the subject firm (TA–40,916). Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 17th day of May, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–13945 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,926]

EVTAC Mining LLC, Formerly Thunderbird Mining, Eveleth, Minnesota; Notice of Negative Determination Regarding Application for Reconsideration

By application dated April 12, 2002, the United Steel Workers of America, Local 6860 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on March 13, 2002, and published in the **Federal Register** on March 29, 2002 (67 FR 15225).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of EVTAC Mining LLC, formerly Thunderbird Mining, Eveleth, Minnesota was denied because criterion (2) of the group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met. Sales and production at the subject firm increased during the relevant period.

The petitioner alleges that sales and production would have shown a decline in the 2001 period if it were not for a fire at the subject firm that disrupted production at the subject plant during year 2000. The petitioner further implies that reduced production at the subject firm in 2000 appears to create an incorrect upward trend in sales and production at the subject plant in 2001.

Based on data supplied by the petitioner and the initial investigation,

sales and production increased in 2001 over the 2000 period. The petitioner supplied a company memo with their request for administrative reconsideration showing what estimated plant production would have been if there were no fire at the subject plant in the year 2000. Based on the information supplied, no declines in sales or production occurred during the relevant period of the investigation.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 14th day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–13938 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,147 and TA–W–40,147A]

Guilford Mills, Inc., Cobleskill, New York and Guilford Mills, Inc., Sales Division, New York, New York; Notice of Revised Determination on Reconsideration

By letter of January 16, 2002, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on December 31, 2001, based on the finding that imports of lace and fabric did not contribute importantly to worker separations at the subject plant. The denial notice was published in the **Federal Register** on January 11, 2002 (67 FR 1510).

To support the request for reconsideration, the company requested that the Department of Labor survey an additional list of major lace customers.

Upon examination of the customer list it became evident that a major customer affiliated with the subject firm was certified for TAA on December 31, 2001 (Guilford Mills, Inc., Herkimer, New York, TA-W–38,749). A major portion of the subject plant's lace was shipped to that facility. That customer incorporated the lace into window and bedspread products. The Herkimer facility was certified for TAA on the basis of increased imports of curtain and bedspreads. The Sales Division workers, located in New York, New York were engaged in the sales of the lace produced by the subject plant. Since a meaningful portion of production and sales at the respective subject firm locations were in direct support of the affiliated certified facility, the subject facilities meet the TAA criteria.

Conclusion

After careful review of the additional facts obtained on reconsideration, the company imports of articles like or directly competitive with an affiliated facility under an existing TAA certification in which Guilford Mills, Inc., Cobleskill, New York and Guilford Mills, Inc., Sales Division, New York, New York are in direct support of contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

''All workers of Guilford Mills, Inc., Cobleskill, New York, (TA–W–40,147) and Guilford Mills, Inc., Sales Division, New York, New York (TA–W–40,147A) who became totally or partially separated from employment on or after September 21, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, DC this 9th day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–13935 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,147, TA–W–40,147B, and TA–W–40,147C]

Guilford Mills, Inc.; Cobleskill, New York, Guilford Mills, Inc., Apparel Home Fashion Division, Greensboro, North Carolina, and Guilford Mills, Inc., Corporate Division, Greensboro, North Carolina; Amended Notice of Revised Determination on Reconsideration

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Revised Determination on Reconsideration on May 9, 2002, applicable to workers of Guilford Mills, Inc., Cobleskill, New York. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of lace and fabric for apparel.

The company reports that worker separations occurred at the Apparel Home Fashion Division and the Corporate Division facilities of the subject firm. These divisions provide sales and administrative support function services directly for the Cobleskill, New York production facility.

Based on these findings, the Department is amending the certification to include workers of Guilford Mills, Inc., Apparel Home Fashion Division and Corporate Division, Greensboro, North Carolina.

The intent of the Department's certification is to include all workers of Guilford Mills, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA-W–40,147 is hereby issued as follows:

''All workers of Guilford Mills, Inc., Cobleskill, New York (TA-W–40,147), Guilford Mills, Apparel Home Fashion Division, Greensboro, North Carolina (TA-W–40,147B) and Guilford Mills, Inc., Corporate Division, Greensboro, North Carolina (TA-W–40,147C) who became totally or partially separated from employment on or after September 21, 2000, through May 9, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 20th day of May, 2002.

Linda G. Poole,

Certifying Officer, Division, of Trade Adjustment Assistance.

[FR Doc. 02–13934 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,473]

Marlan Tool, Inc., Meadville, Pennsylvania; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Marlan Tool, Inc., Meadville, Pennsylvania. The application contained no new substantial

information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–40,473; Marlan Tool, Inc., Meadville, Pennsylvania (May 17, 2002)

Signed at Washington, DC, this 18th day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–13936 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,126]

U.S. Steel Corp., Clairton Works, Clairton, Pennsylvania; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 25, 2002 in response to a petition, which was filed by United Steelworkers of America, Local 1557, on behalf of workers at Clairton Works, U.S. Steel Corporation, Clairton, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of May, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–13944 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,884 and TA–W–39,884A]

VF Playwear, Inc., Centreville, Alabama, and VF Playwear, Inc., Corporate Headquarters, Greensboro, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 5, 2001, applicable to workers of VF Playwear, Inc., Centreville, Alabama. The notice was published in the **Federal Register** on November 20, 2001 (66 FR 58171).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of children's playwear.

The company reports that worker separations occurred at the Corporate Headquarters, Greensboro, North Carolina location of the subject firm. The Corporate Headquarters provides administrative support functions to the subject firms' many production facilities including Centreville, Alabama.

The intent of the Department's certification is to include all workers of VF Playwear, Inc. who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to cover workers of VF Playwear, Inc., Corporate Headquarters, The amended notice applicable to TA-W–39,884 is hereby issued as follows:

''All workers of VF Playwear, Inc., Centreville, Alabama (TA–W–39,884) and VF Playwear, Inc., Corporate Headquarters, Greensboro, North Carolina (TA–W–39,884A) who became totally or partially separated from employment on or after August 2, 2000, through November 5, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington DC, this 23rd day of April, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–13933 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,427]

Wehadkee Yarn Mills, Talladega, Alabama; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 22, 2002, in response to a petition which was filed by the company official at Wehadkee Yarn Mills, Talladega, Alabama.

The petitioner has formally withdrawn the petition and consequentially, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 17th day of May, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–13946 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05556]

Alfa Laval Inc., Formerly Known as Tri-Clover, Kenosha, Wisconsin; Notice of Negative Determination Regarding Application for Reconsideration

By application dated February 21, 2002, the International Association of Machinists and Aerospace Workers, Lodge 34 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers producing pumps and vales of the subject firm. The denial notice for pumps was signed on January 30, 2002, and was published in the **Federal Register** on February 13, 2002 (67 FR 6748). The denial notice for valves was signed on January 30, 2002 and will soon be published in the **Federal Register**.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The NAFTA–TAA petition, filed on behalf of workers at Alfa Laval, Inc., formerly known as Tri-Clover engaged in activities related to the production of pumps and valves was denied because criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production of valves and pumps from the subject firm to Canada or Mexico during the relevant period. The investigation further revealed that during 2000, Tri-Clover was acquired by a company that also owned Alfa Laval.

As both companies produced similar product lines, a strategic business decision was made to consolidate production among multiple facilities. Thus declines in sales, production and employment were attributable to eliminating excess capacity. Plant production of valves and pumps were scheduled to be shifted to other domestic locations during mid-2002. Of note, workers producing fittings at the same location were certified under the same NAFTA–TAA determination (NAFTA–05556). The three groups of workers were separately identifiable.

The petitioner alleges, that the workers producing valves and pumps and related support activities are also impacted by the planned shift in production of valves and pumps to Richmond, Virginia and other foreign countries. The company further states that the decision reached, regarding eligibility of workers engaged in activities related to the production of fittings, was based upon those jobs already being affected due to this area of production transferring outside the United States (Mexico). The petitioner further states that the shift (fittings) does not reflect nor include all of the jobs (valves & pumps) which have been or will be affected at the subject plant over the course of the planned shutdown of this facility.

Since the shift in subject plant production of fittings to Mexico occurred during the relevant period, that worker group was certified eligible for NAFTA–TAA under section 250 of the Trade Act of 1974. Shifts in the subject plant's production of valves and pumps were scheduled for a future period. Unless the shift actually occurred during the relevant period, it is not considered relevant to the petition filed.

Although workers producing fittings were certified eligible under NAFTA–TAA, the workers engaged in activities related to the production of valves and pumps are separately identifiable from the workers producing fittings and therefore cannot be considered eligible under the NAFTA–TAA certification for the workers producing fittings. That certification was based on a shift in subject plant production of fittings to Mexico during the relevant period.

To be considered eligible for NAFTA–TAA under Criterion (4), the product shifted to Mexico or Canada must be like or directly competitive with what the subject plant worker group produced. That was not the current event for the workers producing valves and pumps at the subject plant.

The petitioner further states that in relation to bumping ''it is difficult, if not impossible, to identify the exact employees who will be affected as product is transitioned out of the facility.''

Workers engaged in the production of fittings including support activities related to the production of fittings are eligible to apply for NAFTA–TAA benefits. The Wisconsin Department of Workforce Development follows guidelines in making the final decision of individual eligibility for the NAFTA–TAA worker group engaged in the production of fittings and related support activities. The workers terminated producing valves and pumps, if they are bumped by a worker producing fittings, are eligible to apply for NAFTA–TAA under NAFTA–05556.

Conclusion

After review of the application for reconsideration and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC this 6th day of May 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–13948 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05929]

Oxford Automotive Oscoda Division, Also Known as Simplified Employment Services, D.A.R.T., ELITE LEASING, ERM, INC. AND NMA, INC. Oscoda, Michigan; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on March 27, 2002, applicable to workers of Oxford Automotive, Oscoda Division, Oscoda, Michigan. The notice was published in the **Federal Register** on April 5, 2002 (67 FR 16442).

At the request of the company, the Department reviewed the revised determination for workers of the subject firm. The workers are engaged in the production of automotive metal stampings and assemblies.

New information received from the company shows that the subject firm is also known as several other company entities: Simplified Employment Services, D.A.R.T., Elite Leasing, ERM, Inc. and NMA, Inc. These firms provide payroll and personnel services as well as legal matters for Oxford Automotive. Information also shows that workers wages at the subject firm are reported under the Unemployment Insurance (UI) tax accounts for Simplified Employment Services, D.A.R.T., Elite Leasing, ERM, Inc. and NMA, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's revised determination is to include all workers of Oxford Automotive, Oscoda Division who were adversely affected by the shift of production of automotive metal stampings and assemblies to Mexico.

The amended notice applicable to NAFTA–05929 is hereby issued as follows:

''All workers of Oxford Automotive, Oscoda Division, also known as Simplified Employment Services, D.A.R.T., Elite Leasing, ERM, Inc., and NMA, Inc., Oscoda, Michigan, who became totally or partially separated from employment on or after December 21, 2000, through March 27, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed in Washington, DC this 16th day of May, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–13949 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—5006]

Weyerhaeuser, Longview, Washington; Amended Certification Regarding Eligibility To Apply for NAFTA–Transitional Adjustment Assistance

In accordance with section 250(A), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 30, 2001, applicable to workers of Weyerhaeuser, Fine Paper Division, Longview, Washington. The notice was published in the **Federal Register** on September 11, 2001 (66 FR 47242).

At the request of the Association of Western Pulp and Paper Workers Union, the Department reviewed the certification for workers of the subject firm.

New findings show that some workers of the subject firm who were engaged in the production of fine paper, but not part of the Fine Paper Division, were excluded from the certification.

Based on these findings, the Department is amending the certification to cover all workers of Weyerhaeuser, Longview Fine Paper, engaged in activities related tot he production of fine paper.

The intent of the Department's certification is to include all workers of Weyerhaeuser, Longview Fine Paper, Longview, Washington adversely affected by a shift of production of fine paper (uncoated free sheet paper rolls and folio paper) to Canada.

The Department is amending the certification determination to properly reflect this matter.

The amended notice applicable to NAFTA–05006 is hereby issued as follows:

''All workers at Weyerhaeuser, Longview, Washington who became totally or partially separated from employment on after June 18, 2000, through August 30, 2003, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, DC, this 1st day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–13947 Filed 6–3–02; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: 9:30 a.m., Tuesday, June 11, 2002.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The three items are open to the public.

MATTERS TO BE CONSIDERED:

7384B Aviation Accident Report—Avjet Corporation, Gulfstream III, N303GA, Aspen, Colorado, March 29, 2001, and Safety Recommendation to the Federal Aviation Administration Regarding Crew Resource Management Training for Flight Crewmembers that Conduct On-Demand Charter Operations with Aircraft Requiring Two or More Pilots.

7472 Marine Accident Report—Fire On Board the Small Passenger Vessel Port Imperial Manhattan, Hudson River, New York City, New York, November 12, 2000.

7350A Five Safety Recommendations to the Federal Aviation Administration Concerning the Emergency Exit Door Design of Transport-Category Airplanes and the Adequacy of Information Contained in Air Carriers' Flight and Cabin Crew Training Manuals and Programs Regarding Overpressurization.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100. Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, June 7, 2002.

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: May 31, 2002.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 02–14044 Filed 5–31–02; 2:25 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–03754–MLA and ASLBP No. 02–799–01–MLA]

ABB Prospects, Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding:

ABB Prospects, Inc., CE Windsor Site, (Material License Amendment-Decommissioning)

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a May 8, 2002 hearing request submitted by the Connecticut Department of Environmental Protection regarding a January 7, 2002 decommissioning plan submitted by ABB Prospects, Inc., for portions of the CE Windsor site in Windsor, Connecticut. The request was filed in response to a notice of opportunity to request a hearing and petition to intervene published in the **Federal Register** on April 10, 2002 (67 FR 17472).

The Presiding Officer in this proceeding is Administrative Judge Ann Marshall Young. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Lester S. Rubenstein has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Rosenthal and Cole in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Ann Marshall Young, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Lester S. Rubenstein, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Issued at Rockville, Maryland, this 29th day of May 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02–13904 Filed 6–3–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–35870–EA, ASLBP No. 02–800–01–EA]

United Evaluation Services, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

United Evaluation Services, Inc., Beachwood, New Jersey

This Board is being established pursuant to an Order Suspending License (Effective Immediately) and Demand for Information issued by the NRC Staff on May 14, 2002. The Order, which suspended, effective

immediately, the 10 CFR part 30 license of United Evaluation Services, Inc., authorizing its possession and use of certain byproduct material for industrial radiography, was published in the **Federal Register** (67 FR 36,038 (May 22, 2002)). The proceeding involves a May 17, 2002 request for a hearing submitted by Joseph J. Ferenc, President, on behalf of United Evaluation Services, Inc., including a request to set aside the immediate effectiveness of the order.

The Board is comprised of the following administrative judges:

G. Paul Bollwerk, III, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Thomas D. Murphy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 29th day of May 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02–13905 Filed 6–3–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of June 3, 10, 17, 24, July 1, 8, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 3, 2002

Friday, June 7, 2002

9:00 a.m.
Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2)

Week of June 10, 2002—Tentative

There are no meetings scheduled for the Week of June 10, 2002.

Week of June 17, 2002—Tentative

There are no meetigns scheduled for the Week of June 17, 2002.

Week of June 24, 2002—Tentative

Tuesday, June 25, 2002

2:00 p.m.
Discussion of Intragovernmental Issues (Closed—Ex. 1)

Wednesday, June 26, 2002.

10:30 a.m.
All Employees Meeting (Public Meeting)
1:30 p.m.
All Employees Meeting (Public Meeting)

Week of July 1, 2002—Tentative

Monday, July 1, 2002

2:00 p.m.
Discussion of International Safeguards Issues (Closed—Ex. 9)

Week of July 8, 2002—Tentative

Wednesday, July 10, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Briefing on License Renewal Program and Power Uprate Review Activities (Public Meeting) (Contacts: Noel Dudley, 301–415–1154, for license renewal program; Mohammed Shuaibi, 301–415–2859, for power uprate review activities). This meeting will be webcast live at the Web address: *www.ncr.gov*
2:00 p.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360). This meeting will be webcast live at the Web address: *www.ncr.gov.*

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

ADDITIONAL INFORMATION: ''Discussion of Intergovernmental Issues (Closed—Ex. 1),'' scheduled for June 4, 2002, was canceled.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several haundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting scheudle electronically, please send an electronic message to dkw@nrc.gov.

Dated: May 30, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–14059 Filed 5–31–02; 2:24 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 3, 2002:

A closed meeting will be held on Wednesday, June 5, 2002, at 2:00 p.m.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (6), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled for Wednesday, June 5, 2002, will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and a

Litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: May 30, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14023 Filed 5–31–02; 11:47 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45992; File No. SR–CBOE–2002–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Its AutoQuote Triggered EBook Execution System

May 29, 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 March 13, 2002, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 CBOE. That filing was amended on April 17, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt an interpretation to its ''Trigger'' rule (Rule 6.8(d)(v)) to clarify when a Trigger trade must be manually endorsed to a trading crowd member(s) instead of to the RAES ''wheel.'' Below is the text of the proposed rule change. New text is in *italics.* Proposed deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Inc. Rules

* * * * *

Chapter VI—Doing Business on the Exchange Floor

Section A: General

This Rule governs RAES operations in all classes of options, except to the extent otherwise expressly provided in this or other Rules in respect of specified classes of options.

RULE 6.8 (a)–(c) No change.

(d) Execution on RAES

(i)–(iv) No change.

(v) Notwithstanding sub-paragraph (d)(iv), for classes of options as determined by the appropriate Floor Procedure Committee, for any series of options where the bid or offer generated by the Exchange's Autoquote system (or any Exchange approved proprietary quote generation system used in lieu of the Exchange's Autoquote system) is equal to or crosses the Exchange's best bid or offer as established by an order in the Exchange's limit order book, orders in the book for options of that series will be automatically executed against participants on RAES up to the number of contracts equal to the applicable maximum size of RAES-eligible orders for that series of options (''Trigger''). *In the event a member in the trading crowd verbally initiates a trade with a book order prior to the time the book staff announces to the trading crowd that the order has been removed from the book by Trigger, the book staff will manually endorse the book order to that member(s).* In the event the order in the book is for a larger number of contracts than the applicable RAES contract limit, the balance of the book order will be executed manually by the trading crowd. In the limited circumstance where contracts remain in the book after an [automatic] execution of a book order up to the applicable RAES contract limit, and the disseminated quote remains crossed or locked with the Autoquote bid or offer, or for any series where Trigger has not yet been implemented by the appropriate Floor Procedure Committee, orders in RAES for options of that series will not be automatically executed but instead will be rerouted on ORS to the crowd PAR terminal or to another location in the event of system problems or contrary firm routing instructions.

(e)–(g) No change.

Interpretations and Polices

.01–.08 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 CBOE 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 CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt an interpretation to Rule 6.8(d)(v), which governs the operation of the AutoQuote Triggered EBook Execution system (''Trigger''). The proposed interpretation will make clear when a Trigger trade must be endorsed manually to a trading crowd member(s) instead of to the RAES ''wheel.'' Trigger is a system that allows certain orders resting in the book to be automatically executed in the limited situation where the bid or offer for a series of options generated by the Exchange's AutoQuote system (or any Exchange approved proprietary quote generation system used in lieu of the Exchange's AutoQuote system) is equal to or crosses the Exchange's best bid or offer for that series as established by a booked order.[4]

In those classes where Trigger has been activated, as AutoQuote[5] changes and the quote generated by AutoQuote either touches or crosses a resting order in the book on the opposite side of the quote, the Trigger process is initiated and the book order(s) is immediately taken out of the book (the book order is ''Triggered'') and a last sale is disseminated. An inversion notice ticket is printed on the book printer and an item will appear on the EBook Trigger Endorsement Screen notifying the book clerk that Trigger has taken an order(s) out of the book and an endorsement is required. At this point, the book staff will announce to the trading crowd that an order in the book has been Triggered and the terms of the trade. After the book clerk verifies with the DPM (or OBO) that the Trigger trade is valid based on movements in the underlying security, the trade will be endorsed by the book clerk to the RAES ''wheel'' up to the RAES contract limit applicable for that particular series of options.

In its original filing, the Exchange noted that in most instances a Trigger trade will be endorsed to the RAES wheel, but that the Trigger system has the functionality to allow the book staff

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jaime Galvan, CBOE, to Andrew Shipe, Special Counsel, Division of Market Regulation, Commission, dated April 16, 2002 (''Amendment No. 1''). In Amendment No. 1, the CBOE revised its proposal to add text to its Rule 6.8(d)(v), rather than adopt an interpretation without rule text. For purposes of determining the effective date and calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers April 17, 2002 to be the effective date of the proposed rule change, the date CBOE filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[4] The Commission approved the rule governing the Trigger system in Securities Exchange Act Release No. 44462 (June 21, 2001), 66 FR 34495 (June 28, 2001) (approving SR–CBOE–00–22).

[5] The use of the term ''AutoQuote'' herein means either the Exchange's AutoQuote system or any Exchange-approved proprietary quote generation system.

to endorse a Trigger trade manually when appropriate.[6] The typical situation that was envisioned by the Exchange that would result in a DPM manually endorsing a Trigger trade to a crowd member is when the DPM noticed that a crowd member was in the process of verbally initiating a trade with the book. In this situation, the DPM could decide to utilize the manual endorsement functionality to award the Triggered trade to that particular crowd member as opposed to endorsing it to the RAES wheel because that crowd member was first to bid (offer) for the book order.

As Trigger has been rolled out to the trading floor, the Exchange has observed that while it is possible for the book staff to know exactly when a crowd member initiated a trade with the book, it is not possible to know exactly when a Trigger activation occurred. When there is a crowd member claiming to have traded with the book first and the book staff is uncertain which came first, the crowd member's bid or offer or the Trigger, the DPM (OBO) practice has been to endorse the Trigger trade to the RAES wheel.

The Exchange proposes to interpret Rule 6.8(d)(v) to require a DPM (OBO) to manually endorse a Triggered book order to a crowd member not only in the situation when it is known a crowd member was bidding (offering) for a book order prior to Trigger activation, but also to a crowd member who bids (offers) for a Triggered book order prior to the time the book staff announces the Triggered order to the crowd. In these instances, the DPM (OBO) will manually endorse the order to the crowd member(s) who is bidding (offering) for the booked order that was Triggered as opposed to endorsing the order to the RAES wheel.[7] The Exchange believes this interpretation is appropriate for the reason that it provides a clear reference point for determining the priority of a member's bid or offer in regards to a Triggered book order. The proposed interpretation will enable a market maker to trade against a Triggered book order in the instance where a market maker initiated the procedure to trade with the Triggered book order before it is announced to the trading crowd.

The general rule will be that if the book staff does not receive any bids (offers) from a crowd member for a Triggered book order by the time the book staff announces the Triggered order to the crowd, the book staff will endorse the trade to the RAES wheel.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5)[9] in particular in that it is designed 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

CBOE does not believe that the proposed rule change will impose any burden on competition 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act,[10] and subparagraph (f)(1) of Rule 19b–4 thereunder because it is designated as a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

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 filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. CBOE–2002–12 and should be submitted by June 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–13914 Filed 6–3–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 66 FR at 34495.

[7] As with any trade that takes place at the DPM's previously established principal bid or offer, the DPM would be entitled to participate in a percentage of the trade with the book order pursuant to Rule 8.87 and would manually endorse that portion of the order to himself.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(1).

[12] See supra note 3.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45988; File No. SR–CHX–2002–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Eliminate CHX Rule Provisions Governing Stop Order Bans

May 28, 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 24, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The CHX provided the Commission written notice of its intent to file the proposal on November 21, 2001. The Exchange has asked the Commission to waive the 30-day operative delay to allow the proposal to be effective and operative upon filing with the Commission.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article IX of the CHX Rules to eliminate CHX Rule 10B, which governs imposition of a stop order ban during periods of extraordinary market volatility. The text of the proposed rule change is below. Proposed deletions are in brackets.

Article IX

Trading Rules

* * * * *

[Stop Order Ban Due to Extraordinary Market Volatility

Rule 10B. If the New York Stock Exchange (''NYSE'') institutes a stop and stop limit order ban pursuant to NYSE Rule 80A, no member or member organization shall enter any stop order or stop limit order in Dual Trading System issues traded both on the NYSE and the Exchange for the remainder of the trading day, except that a member or member organization may enter such a stop order or a stop limit order of 2,099 shares or less for the account of an individual investor pursuant to instructions received directly from the individual investor.

* * * * *

Interpretations and Policies:

.01 Whenever the NYSE implements a stop order ban pursuant to NYSE Rule 80A, the Exchange will also ban such orders as follows:

(i) Upon notice, from the NYSE that all new stop and stop limit orders in all stocks are banned for the remainder of the day (except for orders up to 2099 shares for the account of an individual investor), the Exchange will announce to its floor and MAX customers that a stop order ban in all Dual Trading System issues traded both on the NYSE and the Exchange is in effect for the remainder of the day, except for such orders up to the 2099 shares for the accounts of individual investors.

(ii) The entry of such stop and stop limit orders (other than orders up to 2099 shares for the accounts of individual investors) will be banned on the Exchange for the remainder of the day. Such a stop or stop limit order received in the MAX system will be rejected and the message ''stop not accepted-ban in effect'' will be sent back to the entering firm unless the order includes the ''I'' designator, is for the account of an individual investor and is for 2099 shares.]

* * * * *

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 CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 CHX proposes to eliminate the CHX Rule that bans the receipt of stop orders during periods of extraordinary market volatility (CHX Article IX, Rule 10B—Stop Order Ban Due to Extraordinary Market Volatility).

In its current form, this CHX Rule bans acceptance or execution of stop orders by the CHX for the remainder of the trading day whenever the New York Stock Exchange (''NYSE'') implements a ''circuit breaker'' stop order ban pursuant to NYSE Rule 80A (and sends notice of such ban to the CHX).

In 1999, the NYSE eliminated NYSE Rule 80A.[5] Because the CHX stop order ban rule is contingent on a primary market ban imposed pursuant to NYSE Rule 80A, in effect, elimination of NYSE Rule 80A rendered the corresponding CHX rule superfluous. To preclude any possible confusion, the Exchange believes the Rule should nevertheless be formally eliminated from the CHX Rules.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] In particular, the CHX believes the proposal is consistent with Section 6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal both effective and operative upon filing with the Commission because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the CHX to eliminate CHX Rule 10B and the corresponding Interpretation and Policy from the CHX Rules immediately. The Commission finds no legitimate reason to delay the operation of this proposed rule change for 30 days. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[10]

[5] *See* Securities Exchange Act Release No. 41041 (February 11, 1999), 64 FR 8424 (February 19, 1999) (SR–NYSE–98–45) (order approving amendments to NYSE Rule 80A).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] For purposes only of accelerating the operative date of this proposal, the Commission has

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR–CHX–2002–16 and should be submitted by June 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–13868 Filed 6–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45989; File No. SR–DTC–2001–16]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to Technical Language Changes to Certain DTC Rules

May 28, 2002.

On August 31, 2001, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–2001–16) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposed rule change was published in the **Federal Register** on March 18, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The proposed rule change expands the term ''procedures,'' as defined under Rule 1, to include service guides and regulations. The proposed rule change deletes references to ''Executive Vice President'' and ''Senior Vice President'' as officers of DTC because these titles are obsolete as no longer used at DTC and adds references to ''Managing Director'' to Rule 18, which allows certain DTC officers and directors to waive or suspend rules and procedures, and to Rule 28 which allows certain officers and directors to act under delegated authority from the board of directors on behalf of DTC. Rule 27 is amended to allow the board of directors to delegate authority to any DTC officer referenced in the board's delegation resolution.

II. Discussion

Section 17A(b)(3)(F)[3] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The rule change allows DTC's rules to accurately reflect its current management structure. Updating Rules 1, 18, 27, and 28 will provide the appropriate officers of DTC with the ability to carry out their responsibilities. Therefore, the Commission finds that the rule change is consistent with DTC's obligation under Section 17A to have rules that are designed to promote the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2001–16) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–13872 Filed 6–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45985; File No. SR–ISE–2002–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC Amending Exchange Rule 722 To Adopt Procedures for Executing the Stock Legs Portion of Stock-Option Orders

May 24, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on May 21, 2002, the International Securities Exchange LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt procedures for the trading of Stock-Option orders.

The text of the proposed rule change appears below. New text is in italics.

Rule 722. Complex Orders

* * * * *

Supplementary Material to Rule 722

.01 No Change.

.02 A bid or offer made as part of a stock-option order, as defined in (a)(5) above, is made and accepted subject to the following conditions: (1) the stock-option order must disclose all legs of the order and must identify the price at which the non-option leg(s) of the order is to be filled; and (2) concurrent with the execution of the options leg of the order, the initiating member and each member that agrees to be a contra-party on the non-option leg(s) of the order must take steps immediately to transmit the non-option leg(s) to a non-Exchange market(s) for execution. Failure to observe these requirements will be considered conduct inconsistent with just and equitable principles of trade and a violation of Rule 400.

A trade representing the execution of the options leg of a stock-option order

considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 45540 (March 12, 2002), 67 FR 12070.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

may be cancelled at the request of any member that is a party to that trade only if market conditions in any of the non-Exchange market(s) prevent the execution of the non-option leg(s) at the price(s) agreed upon.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose*

ISE Rule 722 provides for the execution of complex orders on the Exchange, including Stock-Option Orders. However, the Rule does not currently provide procedures for executing the stock leg(s) of these types of orders. The Exchange states that the purpose of the proposed rule change is to establish such procedures.

According to the Exchange, the proposal would require that a member entering a Stock-Option Order to disclose all the legs of the order and the price at which the non-option leg(s) are to be filled. Following execution of the options leg, the parties would be required to immediately transmit the stock leg(s) to stock market(s) for execution. If the parties cannot execute the stock leg(s) at the agreed-upon price(s), the Exchange would cancel the option leg at the request of any party to the trade.

According to the Exchange, the proposed rule change is based on Chicago Board Options Exchange Rule (''CBOE'') 6.48(b). The Exchange believes that the only difference between these rules is that the CBOE rule requires the member initiating a stock-option order to announce the specific market or markets on which the stock trade will be effected. The Exchange does not believe requiring the disclosure of the specific market(s) of execution provides meaningful information to the trading crowd. Rather, the Exchange would allow the members effecting the trade to choose the market(s) of their choice for the stock transactions.

(2) *Statutory Basis*

The Exchange's basis for the proposed rule change is the requirement under Section 6(b)(5) of the Act [3] that an exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [4] and subparagraph (f)(6) of Rule 19b–4 [5] thereunder because the Exchange has designated the proposed rule change as one that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such 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.

Under Rule 19b–4(f)(6)(iii) of the Act,[6] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date in order for it to implement the proposed rule change as quickly as possible. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period.[7]

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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–2002–14 and should be submitted by June 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–13871 Filed 6–3–02; 8:45 am]

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[3] 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] 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).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45990; File No. SR–NASD–00–76]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the National Association of Securities Dealers, Inc. Relating to Locked and Crossed Markets That Occur at or Prior to the Market Open

May 28, 2002.

I. Introduction

On January 5, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the provisions of NASD Rule 4613(e)(1)(C), ''Locked and Crossed Markets,'' to revise the use of Trade-or-Move Messages during locked and crossed market conditions that occur prior to the market's opening, and to add provisions relating to the use of Trade-or-Move Messages prior to the market's close. On January 22, 2001, the NASD, through Nasdaq, filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on February 7, 2001.[4] The Commission received seven comment letters regarding the proposal.[5] Nasdaq responded to the commenters in Amendment Nos. 2 and 3 to the proposal, which the NASD, through Nasdaq, filed with the Commission on August 13, 2001,[6] and February 21, 2002,[7] respectively. Amendment Nos. 2 and 3 were published for comment in the **Federal Register** on March 11, 2002.[8] The Commission received three comment letters regarding Amendment Nos. 2 and 3.[9] The NASD, through Nasdaq, responded to the comments regarding Amendment Nos. 2 and 3 on April 5, 2002,[10] and on April 16, 2002,[11] respectively. This order approves the proposed rule change and Amendment Nos. 1, 2, and 3.

II. Description of the Proposed Rule Change

A. Background

In its original rule proposal, Nasdaq proposed amendments to NASD Rule 4613(e)(1)(C) that would alter the obligations of market makers and ECNs during locked and crossed markets that occur prior to the market's open and also prior to the close. Specifically, Nasdaq originally proposed to: (1) Extend the application of NASD Rule 4613(e)(1)(C)(ii) regarding locked and crossed markets before the open to the period prior to the close; (2) require market makers and ECNs that send a Trade-or-Move Message to do so at least 15 seconds before entering a locking or crossing quote rather than after entering a locking or crossing quote, as the rule currently requires; (3) increase from 5,000 to 10,000 the minimum number of shares that must accompany a non-agency Trade-or-Move Message; and (4) reduce the amount of time within which the recipient of a Trade-or-Move Message must properly respond to the message from 30 seconds to 15 seconds.

The Commission received seven comment letters regarding the original proposal, as amended by Amendment No. 1.[12] In response to the commenters, Nasdaq filed Amendment No. 2 to the proposal, which made several changes to the original proposal to address concerns raised by the commenters. The proposal, as amended by Amendment No. 2, will: (1) Require ECNs to send Trade-or-Move Messages prior to entering locking or crossing quotes and require market makers to send Trade-or-Move Messages after entering locking or crossing quotes; (2) reduce the time to respond to a Trade-or-Move Message to 10 seconds; (3) provide a 10,000-share minimum share requirement for Trade-or-Move Messages for Nasdaq 100 Index (''Nasdaq 100'') and S&P 400 Index (''S&P 400'') issues; (4) prohibit all market participants from entering locking or crossing quotes between 9:29:30 a.m. and 9:29:59 a.m.; and (5) delete provisions in the original proposal imposing Trade-or-Move requirements between 3:50 p.m. and 4:00 p.m.[13]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Jeffrey S. Davis, Assistant General Counsel, Nasdaq, to Sapna C. Patel, Attorney, Division of Market Regulation (''Division''), Commission, dated January 19, 2001 (''Amendment No. 1''). In Amendment No. 1, Nasdaq made a minor technical correction to the rule text.

[4] *See* Securities Exchange Act Release No. 43913 (January 31, 2001), 66 FR 9394.

[5] *See* letter from Mark R. Grewe, Managing Director, NDB Capital Markets, L.P., to Jonathan G. Katz, Secretary, Commission, dated February 27, 2001 (''NDB Letter''); letter from Martin Cunningham, Senior Vice President Trading, Schwab Capital Markets L.P. (''Schwab''), to Jonathan G. Katz, Secretary, Commission, dated February 28, 2001 (''Schwab Letter''); letter from Richard B. Levin, Assistant General Counsel and Regulatory Affairs Officer, Knight Securities, L.P. (''Knight''), to the Commission, dated March 1, 2001 (''Knight Letter''); letter from Kim Bang, President, Bloomberg Tradebook LLC (''Bloomberg''), to the Commission, dated March 15, 2001 (''Bloomberg Letter''); letter from Timothy G. Grazioso, Subcommittee Chairman, Trading Issues Committee, Security Traders Association (''STA''), Michael T. Bird, Chairman, Trading Issues Committee, STA, and Geoffrey W. Cloud, Counsel, Trading Issues Committee, STA, to Jonathan G. Katz, Secretary, Commission, dated March 13, 2001 (''STA Letter''); letter from Kevin J.P. O'Hara, General Counsel, Archipelago, L.L.C. (''Archipelago'') to Jonathan G. Katz, Secretary, Commission, dated April 3, 2001 (''Archipelago Letter''); and letter from William O'Brien, Senior Vice President & General Counsel, The BRUT ECN, L.L.C., (''BRUT'') to the Commission, dated April 17, 2001 (''BRUT Letter'').

[6] *See* letter (with attachment) from Eugene A. Lopez, Senior Vice President, Nasdaq, to Belinda Blaine, Associate Director, Division, Commission, dated August 10, 2001 (''Amendment No. 2''). In Amendment No. 2, Nasdaq responds to the commenters and proposes to revise its original proposal to: (1) require electronic communications networks (''ECNs'') to send Trade-or-Move Messages prior to entering locking or crossing quotes and require market makers to send Trade-or-Move Messages after entering locking or crossing quotes; (2) reduce the time to respond to a Trade-or-Move Message to 10 seconds; (3) provide a 10,000-share minimum share requirement for Trade-or-Move Messages for Nasdaq 100 and S&P 400 issues; (4) prohibit all market participants from entering locking or crossing quotes between 9:29:30 a.m. and 9:29:59 a.m.; and (5) delete provisions imposing Trade-or-Move requirements between 3:50 p.m. and 4 p.m.

[7] *See* letter from Jeffrey S. Davis, Nasdaq, to John Polise, Senior Special Counsel, Division, Commission, dated February 21, 2002 (''Amendment No. 3''). In Amendment No. 3, Nasdaq responds to comments from BRUT and clarifies a misstatement in Amendment No. 2. Specifically, Amendment No. 3 states that the requirement that ECNs send Trade-or-Move Messages prior to entering locking or crossing quotes applies to all orders that ECNs receive and is not limited to agency orders, as stated incorrectly in Amendment No. 2.

[8] *See* Securities Exchange Act Release No. 45508 (March 5, 2002), 67 FR 10956 (''March 11 Release'').

[9] *See* letter from Joshua Levine to *rule-coments@sec.gov*, Commission, dated April 1, 2002 (''Levine Letter''); letter from Keith Brickman, Managing Director, Morgan Stanley, Inc. (''Morgan Stanley''), to Jonathan G. Katz, Secretary, Commission, dated April 4, 2002 (''Morgan Stanley Letter''); and letter from Chris Holter, Head of OTC Trading, and Betsy Prout Lefler, Director, Equity Capital Markets Compliance, First Union Securities, Inc. (''First Union''), to Commission, dated April 5, 2002 (''First Union Letter'').

[10] *See* letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Yvonne Fraticelli, Special Counsel, Division, Commission, dated April 5, 2002 (''April 5 Letter''). In the April 5 Letter, Nasdaq states its reasons for retaining the Trade-or-Move requirements rather than requiring market participants to enter firm quotes prior to the market opening, as the commenter suggests.

[11] *See* letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Yvonne Fraticelli, Special Counsel, Division, Commission, dated April 15, 2002 (''April 15 Letter''). As discussed more fully below, in the April 15 Letter, Nasdaq addressed concerns raised in the Morgan Stanley Letter and First Union Letter.

[12] *See supra* note 5.

[13] *See* Amendment No. 2, *supra* note 6.

B. Nasdaq's Amended Proposal

1. Sequence of Messages

In its original proposal, Nasdaq proposed to revise NASD Rule 4613(e)(1)(C) to require all market participants to send Trade-or-Move Messages before, rather than after, entering a locking or crossing quotation. In response to concerns raised by commenters,[14] Nasdaq revised its proposal to permit the sequence of Trade-or-Move Messages to differ by market participant business model. Specifically, under the amended proposal, ECNs will send a Trade-or-Move Message before entering a locking or crossing quote, and market makers will send a Trade-or-Move Message immediately after entering a locking or crossing quote.[15] Nasdaq believes that the proposed change will permit ECNs to participate more effectively in the pre-opening period, while permitting market makers to retain their current automated systems.[16] Nasdaq believes that the proposed change also will preserve the benefits that Nasdaq sought to achieve when it first implemented the Trade-or-Move requirements, including increased price discovery and decreased gamesmanship surrounding the occurrence and resolution of locked and crossed markets.[17]

2. Response Time

Under current NASD Rule 4613(e)(1)(C), the recipient of a Trade-or-Move Message must respond properly to the message within 30 seconds. In the original proposal, Nasdaq proposed to reduce the response time to 15 seconds to reduce the duration of locked and crossed markets that occur.

Based upon commenters' concern that 15 seconds was too long a response time,[18] Nasdaq proposed to reduce the time for responding to a Trade-or-Move Message to 10 seconds. Although Nasdaq acknowledges that this is a relatively brief period for non-automated participants, Nasdaq believes that firms that choose to participate in the pre-open must vigilantly monitor their quotes.[19] In addition, as described more fully below, Nasdaq believes that the 10-second response time will help ECNs to avoid dual liability.[20]

3. Number of Shares

Under current NASD Rule 4613(e)(1)(C), the aggregate size of the Trade-or-Move Message must be at least 5,000 shares (*i.e.,* the market participant must send a total of 5,000 shares to all parties it is locking or crossing) in the case of a proprietary quote, or the actual size of an agency order if that is the basis for the locking or crossing quote. Under the original proposal, Nasdaq sought to raise the minimum Trade-or-Move Message share requirement to 10,000 shares or the actual size of an agency order. Nasdaq believes that a market participant must be willing to risk significant capital and to trade a significant amount if it wishes to lock or cross the market during the ten minutes prior to the opening.

In light of concerns raised regarding the 10,000-share requirement,[21] Nasdaq revised the proposal to limit the 10,000-share Trade-or-Move Message requirement size to proprietary orders involving securities in the Nasdaq 100 Index and the S&P 400 Index. The minimum Trade-or-Move Message size requirement will remain at 5,000 shares for other issues. The ''agency exception'' contained in current NASD Rule 4613(e)(1)(C) will continue to operate as it does today. Nasdaq believes that Nasdaq 100 and S&P 400 issues are marked by higher liquidity and faster trading and, therefore, merit a more stringent effort to avoid locked or crossed markets. Nasdaq believes that the 10,000-share requirement proportionately increases the economic significance of entering a locking or crossing quotation for stocks that are widely followed and for which a locked or crossed market would have the greatest impact.

4. Limited Prohibition on Entry of Locking and Crossing Quotes

Based upon the recommendation of the Trade-or-Move Subcommittee (''Subcommittee'') of Nasdaq's Quality of Markets Committee, Nasdaq revised the proposal to prohibit market participants from entering a locking or crossing quote between 9:29:30 a.m. and 9:29:59 a.m.[22] During that period, all market participants will be permitted to send Trade-or-Move Messages for the required number of shares to parties that they would lock or cross if permitted to enter such locking or crossing quotes. Market participants that receive Trade-or-Move Messages during that time period will be obligated to respond properly by trading in full or moving their quote within the appropriate response time.

Nasdaq believes that a prohibition on the entry of locking and crossing quotes immediately prior to the market opening, in conjunction with the continued obligation to respond properly to Trade-or-Move Messages, will facilitate the resolution of locks and crosses that exist at 9:29:30 a.m. Further, Nasdaq believes that the potential benefits to all market participants of a more orderly opening outweigh the limited loss of price discovery that will result from suppressing locking and crossing quotes during that brief but critical period.

5. Pre-Closing

Based upon the positive effect that the Trade-or-Move requirements have had on resolving potential locked and crossed markets at and immediately before the market opening, Nasdaq originally proposed to expand the application of NASD Rule 4613(e)(1)(C) to include the 10-minute period preceding the market close (3:50 p.m. to 3:59:59 p.m.). The commenters generally opposed this provision of the original proposal. In light of the comments received and with the implementation of SuperSOES, Nasdaq revised the proposal to eliminate the provisions expanding the application of NASD Rule 4613(e)(1)(C) to the period prior to the closing.

III. Summary of Comments and Nasdaq's Response

A. Comments to the Original Proposal and Amendment No. 1

As noted above, the Commission received seven comment letters regarding the original proposal, as amended by Amendment No. 1.[23] In response to the commenters, Nasdaq filed Amendment No. 2 to the proposal, which made several changes to the original proposal to address concerns raised by the commenters. In addition, Nasdaq filed Amendment No. 3 to the

[14] *See, e.g.,* Schwab Letter, *supra* note 5 (asserting that the proposal to require market makers to send a Trade-or-Move Message prior to entering a locking or crossing quote would necessitate manual, rather than automated processing; and NDB Letter, *supra* note 5 (stating that the proposal to require market makers to send a Trade-or-Move Message prior to entering a locking or crossing quote would require substantial programming changes).

[15] ''Immediate'' issuance of a Trade-or-Move Message will be understood to mean instantaneous in the case of automated systems and not exceeding a different, specified period where manual processes are utilized.

[16] *See* Amendment No. 2, *supra* note 6.

[17] *See* Amendment No. 2, *supra* note 6.

[18] *See, e.g.,* Knight Letter and STA Letter, *supra* note 5.

[19] *See* Amendment No. 2, *supra* note 6.

[20] *See* Amendment No. 2, *supra* note 6.

[21] *See, e.g.,* Knight Letter, *supra* note 5 (expressing concern that the 10,000-share requirement could require a firm to commit $1 million to execute an order in certain stocks at a time when the market is not fully functional).

[22] Nasdaq formed the Subcommittee to respond to concerns raised by the initial seven commenters to the proposal. The Subcommittee was comprised of the initial seven commenters and members representing other constituencies within the Nasdaq market making community.

[23] *See supra* note 5.

proposal, which responded to the concerns of one commenter and corrected a misstatement in Amendment No. 2.[24] Amendment Nos. 2 and 3 were published for comment in the March 11 Release.[25] The comments raised by the seven commenters to the original proposal, and Nasdaq's response to the commenters, are discussed in detail in the March 11 Release.

B. Comments Regarding Amendment Nos. 2 and 3 and Nasdaq's Response

The Commission received three comment letters regarding Amendment Nos. 2 and 3.[26] One commenter suggested that Nasdaq replace the Trade-or-Move requirements with a requirement that market participants enter firm quotes prior to the market open.[27]

In its response, Nasdaq stated that the Subcommittee considered the commenter's suggested approach twice in 2001.[28] Nasdaq believes, however, that the commenter's suggested approach would either shift occurrences of locked and crossed markets to an earlier time period or eliminate a beneficial pre-opening opportunity. In this regard, Nasdaq states that it is important for market participants to use Nasdaq systems to gather information, adjust their quotations, and prepare for the market open before the market opens. Nasdaq believes that revising the Trade-or-Move requirements provides the best method for improving the quality of the market open.[29]

Another commenter stated that, although it generally supports Nasdaq's efforts to improve the Nasdaq opening, it believes that Nasdaq's amended proposal falls short of solving concerns surrounding the market open.[30] The commenter suggested that the most effective way to improve the market open is to require that the first official print in a Nasdaq stock be based upon the first unlocked and uncrossed market, thereby reflecting the true market price of the security.[31] In addition, the commenter stated that to provide more effective deterrence, firms that do fail to comply with Nasdaq's requirements for locked and crossed markets during the pre-opening should be taken ''out of the box'' and not allowed to quote for a specified period of time.[32] Finally, the commenter recommended that all market participants be required to send a Trade-or-Move Message prior to locking or crossing the market.

Similarly, another commenter stated that the different Trade-or-Move Message sequence requirements for market makers and ECNs would lead to confusion.[33] The commenter stated that all market participants should be required to enter locking or crossing quotes either before or after sending a Trade-or-Move Message; however, the commenter preferred the former sequence.[34] The commenter also recommended that the Trade-or-Move requirements mandate that market participants take continuous action to resolve locked and crossed markets, either by moving the locking or crossing quote after receiving an execution or by sending another Trade-or-Move Message to trade for additional shares at the quoted price.

In response to the concerns regarding the different Trade-or-Move Message sequences for market makers and ECNs, Nasdaq states that, after carefully examining the issue, it has concluded that the proposed message sequences will reduce the instances of locked and crossed markets.[35] With regard to the concern that the current Trade-or-Move requirements do not require ongoing efforts to resolve locked and crossed markets, Nasdaq states that it expects to file a proposal with the Commission that will further improve the operation of the Trade-or-Move requirements and address both First Union's concern regarding the efficacy of the Trade-or-Move requirements and Morgan Stanley's suggestion that the quote requirements of a market participant that violates the Trade-or-Move requirements be removed from the market for a period of time.[36]

Finally, with respect to Morgan Stanley's suggestion that the first official print in a Nasdaq stock be based on the first unlocked and uncrossed market, Nasdaq states that it is considering a proposal to establish an official opening print price that accounts for Nasdaq's decentralized market structure.[37] Before implementing an opening print process, Nasdaq will solicit input from its Quality of Markets Committee, its Board of Directors, and its members.[38]

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[39] In particular, the Commission finds that the proposal, as amended, is consistent with Sections 15A(b)(6), 15(b)(11), and 11A(a)(1)(C) of the Act.[40] Section 15A(b)(6) of the Act requires that the rules of a national securities association be designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in processing information with respect to and facilitating transactions in securities, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Section 15(b)(11) of the Act requires that the rules of a national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations. In Section 11A(a)(1)(C) of the Act, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors orders in the best market; and (5) an opportunity for investors orders to be executed without the participation of a dealer.

Specifically, the Commission finds that Nasdaq's proposal, as amended, is designed to reduce the frequency of pre-opening locked and crossed markets, which should help to provide more informative quotation information, facilitate price discovery, and contribute to the maintenance of a fair and orderly market. The Commission believes that the proposal, as amended, addresses the concerns raised by the commenters

[24] *See supra* note 7.

[25] *See supra* note 8.

[26] *See supra* note 9.

[27] *See* Levine Letter, *supra* note 9.

[28] *See* April 5 Letter, *supra* note 10.

[29] *See* April 5 Letter, *supra* note 10.

[30] *See* Morgan Stanley Letter, *supra* note 9.

[31] *Id.*

[32] *Id.*

[33] *See* First Union Letter, *supra* note 9.

[34] *Id.*

[35] *See* April 15 Letter, *supra* note 11.

[36] *See* April 15 Letter, *supra* note 11. Nasdaq notes that its Quality of Market Committee and the Subcommittee considered a proposal to remove the quotations of a market participant that violated the Trade-or-Move requirements. However, Nasdaq states that it was unable to develop a solution that would effectively preserve the rights of market participants that had their quotes removed from the market involuntarily. *See* April 15 Letter, *supra* note 11.

[37] *See* April 15 Letter, *supra* note 11.

[38] *See* April 15 Letter, *supra* note 11.

[39] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[40] 15 U.S.C. 78*o*–3(b)(6), 15 U.S.C. 78*o*–3(b)(11), and 15 U.S.C. 78k–1(a)(1)(C).

while providing requirements designed to establish a more orderly market opening.

For example, under the revised Trade-or-Move Message sequence procedures, ECNs will send a Trade-or-Move Message prior to entering a locking or crossing quote, while market makers will send a Trade-or-Move Message after entering a locking or crossing quote. The revised procedures respond to market makers' concerns that requiring market makers to send a Trade-or-Move Message prior to entering a locking or crossing quote would necessitate substantial programming changes or require manual processing.[41] At the same time, the Trade-or-Move Message sequence applicable to ECNs, combined with the requirement to respond to a Trade-or-Move Message within 10 seconds, should help ECNs avoid dual liability. Specifically, the revised rule will allow an ECN to send a Trade-or-Move Message for the actual size of an agency order, wait 10 seconds for a response, and, assuming it receives no response, cancel the Trade-or Move Message and enter the agency order as a locking or crossing quote.[42] The Commission also believes that the requirement to respond to a Trade-or-Move Message within 10 seconds should help to facilitate the prompt resolution of locked or crossed markets that occur.

The amended proposal will require a market participant handling a proprietary order to send a Trade-or-Move Message for a minimum of 10,000 shares in the case of Nasdaq 100 and S&P 400 issues and 5,000 shares for all other issues. The Commission believes that the 10,000-share Trade-or-Move Message size requirement may help to deter market participants entering from locking or crossing quotes in Nasdaq 100 and S&P 400 issues.

As discussed above, Nasdaq's amended proposal prohibits market participants from locking or crossing the market between 9:29:30 a.m. and 9:29:59 a.m. Market participants will, however, be permitted to send Trade-or-Move Messages for the required number of shares to any party or parties they wish to lock or cross. The recipients of such messages must respond to the message by trading in full or moving their quotes within the 10-second response time. The Commission believes that the prohibition on locking and crossing the market between 9:29:30 a.m. and 9:29:59 a.m. could help to provide for a more orderly market open, and thereby benefit all market participants.

Finally, the three comment letters received following the publication of Amendment Nos. 2 and 3 reflect the continuing disagreement among market participants concerning the implementation of the Trade-or-Move requirements and the most effective means for providing an orderly opening on Nasdaq. In its response to the commenters, Nasdaq noted that it is developing proposals designed to address some of the concerns raised by the commenters.[43] The Commission expects Nasdaq to continue working to refine its procedures as necessary to achieve a more orderly market opening.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change (SR–NASD–00–76), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[45]

Margaret H. McFarland

Deputy Secretary

[FR Doc. 02–13873 Filed 6–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45987; File No. SR–NYSE–2001–30]

Self-Regulatory Organizations; The New York Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change to Amend Rule 227 Regarding Depository Eligibility

May 28, 2002.

On August 21, 2001, the New York Stock Exchange, Inc. (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NYSE–2001–30) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposed rule change was published in the **Federal Register** on April 25, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The NYSE adopted Rule 227 on June 1, 1995, for the purpose of facilitating implementation of Rule 15c6–1 of the Act that established a three-day settlement period for most securities transactions.[3] Rule 227, which required that domestic issuers' securities be depository eligible before they would be listed, set forth specific requirements for depository eligibility for issuers in order to facilitate the book-entry settlement of initial public offerings and to reducing the risks inherent in settling securities transactions.

On May 13, 1996, approximately one year after Rule 227 was approved, the Commission approved a rule change filed by The Depository Trust Company (''DTC'')[4] allowing DTC to implement its Initial Public Offering (''IPO'') Tracking System.[5] The IPO Tracking System enables lead managers and syndicate members of equity underwritings to monitor repurchases of distributed shares in an automated book-entry environment.

Currently before an issue of securities can be listed, Rule 227(a) requires each domestic issuer to represent to the NYSE that a CUSIP number identifying the security has been included in the file of eligible issuers maintained by a securities depository registered with the Commission as a clearing agency. The proposed amendments would delete the references to ''domestic'' and ''foreign'' issuers in paragraph (a). Exclusion of foreign issuers is no longer necessary because they have the capacity to comply with Rule 227 and have been doing so voluntarily for several years.

Rule 227(b) states that a security depository's inclusion of a CUSIP number in its file of eligible issues does not render a security ''depository eligible'' unless (1) the securities depository has an electronic system for monitoring repurchases of distributed shares at the time such shares commence trading on the Exchange or (2) when a managing underwriter elects not to deposit the securities on distribution date, it notifies the

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[41] *See, e.g.*, NDB Letter and Schwab Letter, *supra* note 5.

[42] *See* Amendment No. 2, *supra* note 6.

[43] *See* April 15 Letter, *supra* note 11.

[44] 15 U.S.C. 78s(b)(2).

[45] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 45789 (April 19, 2002), 67 FR 20568.

[3] Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 (June 12, 1995)[File No. SR–NYSE–95–19] (order approving the adoption of NYSE Rule 227 setting forth requirements on issuers seeking to have their shares listed on the Exchange).

[4] DTC is a securities depository registered with the Commission under Sections 17A and 19 of the Act as a clearing agency.

[5] Securities Exchange Act Release No. 37208 (May 13, 1996), 61 FR 25253 (May 20, 1996)[File No. SR–DTC–95–27] (order approving implementation of DTC's IPO Tracking System).

securities depository no later than three months after the commencement of trading on the NYSE. Rule 227(b) will be deleted as it is no longer relevant since DTC has implemented its IPO Tracking System, which is monitoring repurchases of distributed shares.

II. Discussion

Section 6(b)(5)[6] of the Act requires that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. Deleting differences relating to ''domestic'' and ''foreign'' issuers with respect to depository eligibility of listed issues eliminates an unnecessary difference in the treatment of U.S. issuers and foreign issuers and thereby helps to perfect the mechanism of a free and open market and a national market system. Therefore, the Commission finds that the rule change is consistent with the NYSE's obligations under Section 6(b)(5).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 6 of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NYSE–2001–30) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–13869 Filed 6–3–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45986; File No. SR–PCX–2001–36]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Technical Changes to the PCX's Firm Quote Rule

May 28, 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 September 27, 2001, 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. PCX submitted Amendment No. 1 to the proposed rule change on May 21, 2002.[3] The Commission is granting accelerated approval to, and publishing this notice to solicit comments on, the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise PCX Rule 6.86 regarding firm quotes. The text of the proposed rule change is below. Proposed new language is italicized.

¶ 5221 Firm Quotes

Rule 6.86(a) *Applicability and* Definitions

(1)–(2) No change.

(*3*) *For purposes of this Rule, the term ''broker-dealer order'' and the term ''order,'' when used with respect to an order for the account of a broker-dealer, will include orders for ''foreign broker-dealers'' as defined in Rule 6.1(b)(31).*

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 III below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In November 2000, the Commission amended Rule 11Ac1–1 under the Act (''Quote Rule'')[4] to apply the Quote Rule to the options markets.[5] In response, the Exchange amended its rules to adopt implementing provisions consistent with the Commission's approval of the Quote Rule.[6] Now, the Exchange proposes to include foreign broker-dealers within its definition of broker-dealer for purposes of its members' firm quote obligation. The Exchange believes this proposed revision codifies the Commission's grant of exemptive relief already provided to options exchanges in allowing them to apply firm quote rules to foreign broker-dealers to the same extent as they do to U.S. broker-dealers.[7] Accordingly, the Exchange believes that the proposed amendment is consistent with and supports the Commission's release regarding the Quote Rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposes to delete the portion of the proposed rule change regarding displaying bids and offers and requests accelerated approval of the amended proposal. *See* letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 20, 2002 (''Amendment No. 1'').

[4] 17 CFR 240.11Ac1–1.

[5] *See* Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000).

[6] *See* Securities Exchange Act Release No. 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001) (order approving SR–PCX–2001–18).

[7] *See* letter from Annette L. Nazareth, Director, Division of Market Regulation, Commission, to Timothy H. Thompson, Assistant General Counsel, Chicago Board Options Exchange (April 2, 2001) (''Exemption Letter'').

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

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 File No. SR–PCX–2001–36 and should be submitted by June 25, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. Specifically, the Commission finds that, by incorporating the Exemption Letter into the PCX's rules, the proposed rule change is consistent with the Commission's grant of an exemption from the Quote Rule for responsible broker-dealers with regard to the handling of orders for the account of foreign broker-dealers.[12]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. As noted above, the proposed rule change is consistent with the Commission's Exemption Letter.[13] Accordingly, the Commission believes that no new regulatory issues are raised by PCX's proposed rule change. The Commission believes, therefore, that granting accelerated approved of the proposed rule change is appropriate and consistent with Section 19(b) of the Act.[14]

V. Conclusion

It is Therefore Ordered, Pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–PCX–2001–36), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–13870 Filed 6–3–02; 8:45 am]

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[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* Exemption Letter, *supra* note 7.

[13] *Id.*

[14] 15 U.S.C. 78s(b).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3413]

State of Missouri; (Amendment #2)

In accordance with information received from the Federal Emergency Management Agency, dated May 24, 2002, the above numbered declaration is hereby amended to include Barry, Barton, Camden, Cedar, Christian, Dade, Dallas, Greene, Hickory, Jasper, Laclede, Lawrence, McDonald, Mississippi, New Madrid, Newton, Pemiscot, Polk, Scott, Stone, Taney, Vernon, Webster and Wright Counties in the State of Missouri as disaster areas due to damages caused by severe storms, tornadoes and flooding beginning on April 24, 2002 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Bates, Benton, Miller, Morgan and St. Clair Counties in Missouri; Benton, Boone and Carroll Counties in Arkansas; Bourbon, Cherokee, Crawford and Linn Counties in Kansas; Ballard, Carlisle, Fulton and Hickman Counties in Kentucky; Delaware and Ottawa Counties in Oklahoma; and Dyer and Lake Counties in Tennessee. All other counties contiguous to the above-named primary counties have been previously declared.

The economic injury numbers assigned are 9P8200 for Kentucky, 9P8300 for Kansas; 9P8400 for Oklahoma; and 9P8500 for Tennessee.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 7, 2002, and for loans for economic injury the deadline is February 10, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 29, 2002.

Herbert L. Mitchell,

Associate Administrator, for Disaster Assistance.

[FR Doc. 02–13987 Filed 6–3–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3413]

State of Missouri; (Amendment #1)

In accordance with information received from the Federal Emergency Management Agency, dated May 21 and May 22, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on April 24, 2002 and continuing and to establish the incident type as severe storms, tornadoes and flooding. The declaration is also amended to include Crawford, Dent, Jefferson, St. Genevieve and Washington Counties in the State of Missouri as disaster areas due to damages caused by severe storms, tornadoes and flooding beginning on April 24, 2002 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Franklin, Gasconade and St. Louis Counties in Missouri; and Monroe County in Illinois. All other counties contiguous to the above-named primary counties have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 7, 2002, and for loans for economic injury the deadline is February 10, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 22, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–13988 Filed 6–3–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Information Quality Guidelines

AGENCY: U.S. Small Business Administration.

ACTION: Notice of guidelines and request for comments.

SUMMARY: The U.S. Small Business Administration (''SBA'') is seeking public comments on its draft report

(''Report'') concerning SBA's proposed information quality guidelines. The Report describes the guidelines that SBA proposes to follow to ensure and maximize the quality of information it disseminates, and the administrative mechanism SBA proposes to use to allow affected persons to seek and obtain correction of information SBA maintains and disseminates.

DATES: Comments are due on June 30, 2002.

ADDRESSES: Send comments to Chet Francis, Office of the Chief Information Officer, U.S. Small Business Administration, 409 Third Street, SW, Suite 4000, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Chet Francis, Office of the Chief Information Officer, (202) 205–6289.

SUPPLEMENTARY INFORMATION: Pursuant to the Office of Management and Budget ''Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies,'' effective January 3, 2002 (''OMB Guidelines''), SBA is required to issue its own information quality guidelines and to establish an administrative mechanism for affected persons to seek and obtain correction of information maintained and disseminated by SBA that does not comply with the OMB Guidelines. SBA also must issue a draft report presenting these two items, and make such report available to the public for comment. SBA's draft Report is available to the public on SBA's web site at *http://www.sba.gov/aboutsba/infoqualityguidelines.pdf,* or by calling Chet Francis at (202) 205–6289, or writing to him at Office of the Chief Information Officer, U.S. Small Business Administration, 409 Third Street, SW, Suite 4000, Washington, DC 20416.

SBA specifically seeks comments on (1) whether SBA's draft guidelines are adequate to ensure and maximize the quality, objectivity, utility, and integrity of the information, including statistical information, that SBA disseminates; and (2) whether SBA's draft administrative mechanism, for affected persons to seek and obtain correction of information maintained and disseminated by SBA that does not comply with the OMB Guidelines, is adequate.

After consideration of public comments, SBA will make appropriate revisions to the draft Report and submit it to OMB for review by no later than July 1, 2002. Upon completion of OMB's review and finalization of the Report, SBA will make its final Report available to the public by no later than October 1, 2002.

Authority: Section 515(a) of the Treasury and General Government Appropriations Act for FY 2001, Pub. L. No. 106–554; Office of Management and Budget ''Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies,'' effective January 3, 2002, 67 FR 8452 (Feb. 22, 2002).

Lawrence E. Barrett,

Chief Information Officer.

[FR Doc. 02–13989 Filed 6–3–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4032]

Culturally Significant Objects Imported for Exhibition Determinations: ''Uncommon Legacies: Native American Art from the Peabody Essex Museum''

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 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibition, ''Uncommon Legacies: Native American Art from the Peabody Essex Museum,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Iris & B. Gerald Cantor Center for Visual Arts at Stanford University, Stanford, California, from on or about May 22, 2002, to on or about August 4, 2002, at the Cincinnati Art Museum, Cincinnati, Ohio, from on or about October 10, 2002, to on or about January 5, 2003, at the Virginia Museum of Fine Arts, Richmond, Virginia, from on or about April 17, 2003, to on or about July 20, 2003, at the Peabody Essex Museum, Salem, Massachusetts, from on or about September 19, 2003, to on or about November 16, 2003, 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 exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: May 23, 2002.

Stephen Hart,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–13916 Filed 6–3–02; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) is making technical corrections to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice, pursuant to authority delegated to the USTR in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415). These modifications correct several inadvertent errors and omissions in the Annex to Presidential Proclamation 7529 of March 5, 2002 (67 FR 10553) so that the intended tariff treatment is provided. In addition, USTR is modifying other portions of the HTS so as to reflect the correct treatment of motor fuel; *d*(-)-*p*-Hydroxyphenylglycine ((*R*)-αAmino-4-hydroxybenzeneacetic acid); inner tubes for certain tires, paper stock; cooler bags with an outer surface of textile materials; Benzenesulfonic acid, 4-[(1,3-dioxybutyl)amino]-5-methoxy-2-methyl-, ammonium salt and monosodium salt; transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting, or television; and postage or revenue stamps, stamp-postmarks, first-day covers, postal stationery (stamped paper) and the like.

EFFECTIVE DATE: The corrections made in this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in each item in the annex to this notice.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th

Street, NW, Room 501, Washington DC, 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On March 5, 2002, Proclamation 7529 established increases in duty and a tariff-rate quota (safeguard measures) pursuant to section 203 of the Trade Act of 1974 (19 U.S.C. 2253) on imports of certain steel products described in paragraph 7 of that proclamation. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., EST, on March 20, 2002, Proclamation 7529 modified the subchapter III of chapter 99 of the HTS so as to provide for such increased duties and a tariff-rate quota. On March 19, 2002, USTR published a **Federal Register** notice (67 FR 12635) making technical corrections to subchapter III of chapter 99 of the HTS to remedy several technical errors introduced in the annex to Proclamation 7529. These corrections ensured that the intended tariff treatment was provided.

Since the publication of the March 19, 2002, **Federal Register** notice, additional technical errors and omissions introduced through the annex to Proclamation 7529 have come to the attention of USTR. The annex to this notice makes technical corrections to the HTS to remedy these errors and omissions. In particular, the annex to this notice corrects errors in the physical dimensions or chemical composition of certain products excluded from the application of the safeguard measures.

In addition, it has come to the attention of USTR that there are technical errors and omissions in other chapters of the HTS due to prior proclamation unrelated to Proclamation 7529. The annex to this notice makes technical corrections to the HTS to remedy these errors and omissions, particularly with regard to incorrect citation to HTS subheadings, elimination of duplicative tariff treatment, deletion of obsolete article descriptions, elimination of conflicting tariff treatment, correct indication of eligibility for the Generalized System of Preferences, deletion of incorrect chemical names, and alignment with Harmonized System nomenclature. These changes would appear to have no impact on duty treatment.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date set forth in each item in the Annex to this notice.

Jon M. Huntsman, Jr.,

Deputy United States Trade Representative.

Annex

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the dates specified in each numbered paragraph below, the Harmonized Tariff Schedule of the United States (HTS) is hereby modified as follows:

1. Effective on and after January 10, 2002, additional U.S. note 3 to chapter 27 is modified by deleting ''2710.00.15'' and by inserting ''2710.11.15'' in lieu thereof.

2. Effective on and after January 1, 1995, chapter 29 of the HTS is modified as follows:

(A) The article description for subheading 2922.50.07 is modified by deleting the word ''acid'' at the end of the last line and substituting in lieu thereof ''acid (d(-)-p-Hydroxyphenylglycine)';

(B) The article description for subheading 2922.50.11 is deleted and the following new description is substituted in lieu thereof: ''Salts of d(-)-p-Hydroxyphenylglycine ((R)-α-Amino-4-hydroxybenzeneacetic acid)'; and

(C) The special rates of duty subcolumn for subheading 2922.50.11 is modified by striking ''K,'' from the parenthetical expression following the duty rate ''Free''.

3. Effective on and after the dates set forth herein, chapter 40 of the HTS is modified as follows:

(A) Effective on and after January 1, 1994, the article description for subheading 4013.90.10 is modified by deleting ''and 4012.20.20'' and by inserting ''4012.20.15 and 4012.20.45'' in lieu thereof; and

(B) Effective on and after January 10, 2002, the article description for subheading 4013.90.10 is modified by deleting ''4011.91.10, 4011.99.10, 4012.10.20'' and by inserting ''4011.61.00, 4011.92.00, 4012.19.20,'' in lieu thereof.

4. Effective on and after January 10, 2002—

(A) Subheadings 4802.54.40, 4802.55.50, 4802.56.50, 4802.58.40, 4802.61.40 and 4802.62.40 and the superior text ''Other:'' immediately below each such subheading are all deleted; and

(B) The article descriptions for the subheadings in the left column below are realigned so they appear at the same level of indentation as the article descriptions for the subheadings in the right column below:

4802.54.50, 4802.54.60	4802.54.30
4802.55.60, 4802.55.70	4802.55.40
4802.56.60, 4802.56.70	4802.56.40
4802.58.50, 4802.58.60	4802.58.20
4802.61.50, 4802.61.60	4802.61.30
4802.62.50, 4802.62.60	4802.62.30

5. Effective on and after January 10, 2002, subheading 4202.92.05 is modified by deleting from the special rates of duty subcolumn the symbol ''A,'.

6. Effective on and after January 1, 1995, the Intermediate Chemicals for Dyes Appendix of the HTS is amended as follows:

(A) For CAS No. 72705–22–7, the chemical name listed in such Appendix is deleted and the following corrected chemical name is inserted in lieu thereof: ''Benzenesulfonic acid, 4-[(1,3-dioxybutyl)amino]-5-methoxy-2-methyl-, ammonium salt'; and

(B) For CAS No. 133167–77–8, the chemical name listed in such Appendix is deleted and the following corrected chemical name is inserted in lieu thereof: ''Benzenesulfonic acid, 4-[(1,3-dioxybutyl)amino]-5-methoxy-2-methyl-, monosodium salt''.

7. Effective on and after January 1, 1996, the article description of heading 8525 is modified by deleting the final appearance of the word ''or'' and by inserting in lieu thereof ''and'.

8. Effective on and after January 1, 1989, the article description of heading 9704.00.00 is modified by inserting a comma after ''(stamped paper)''.

9. Effective on and after March 20, 2002, U.S. note 11 to subchapter III of chapter 99 is modified as follows:

(A) In subdivisions (b)(vii)(E) and (b)(vii)(F), ''8 percent of carbon'' is deleted at each instance and ''0.08 percent of carbon'' is inserted in lieu thereof;

(B) In subdivision (b)(viii)(A), ''0.0254'' is deleted and ''0.245'' is inserted in lieu thereof; in subdivision (b)(viii)(B), ''magnesium'' is deleted and ''manganese'' is inserted in lieu thereof; and in subdivision (b)(viii)(G), the word ''minimum'' is inserted before ''width of 787 mm'';

(C) In subdivision (b)(viii)(H), ''0.22 to 0.97 mm'' is deleted and ''0.20 mm to 1.22 mm'' is inserted in lieu thereof, and ''of 584 to 937 mm'' is deleted and ''range of 584 mm to 1219 mm'' is inserted in lieu thereof;

(D) In subdivision (b)(xii), '', by weight,'' should be deleted and ''(nominal, by weight)'' is inserted in lieu thereof;

(E) In subdivision (b)(xv), ''nickel of 0.40 percent,'' is deleted and ''nickel of 0.40 percent maximum'' is inserted in lieu thereof;

(F) In subdivision (b)(xvi)(A), ''1.91'' is deleted and ''2.01'' is inserted in lieu thereof; ''yield strength of 758 MPa'' is deleted and ''minimum yield strength of 758 MPa'' is inserted in lieu thereof; and ''tensile strength of 813 MPa'' is deleted and ''minimum tensile strength of 813 MPa'' is inserted in lieu thereof;

(G) In subdivision (b)(xvi)(B), ''yield strength of 793 MPa'' is deleted and ''minimum yield strength of 793 MPa'' is inserted in lieu thereof; and ''tensile strength of 931 MPa'' is deleted and ''minimum tensile strength of 931 MPa'' should be inserted in lieu thereof;

(H) In subdivision (b)(xvii), the opening language is modified by deleting ''below'' and by inserting in lieu thereof ''in subdivisions (A) through (C) below, or dual phase steel designated as X–011, as described in subdivision (D) below''; in subdivisions (b)(xvii)(A) through (C), ''1400 mm to 1999 mm'' is deleted at each instance and ''1.400 mm to 1.999 mm'' is inserted in lieu thereof; and in subdivision (b)(xvii)(D) the phrase '',

the foregoing also designated as X–011'' is deleted;

(I) In subdivision (b)(xxii)(D), ''sulfur—0.35'' is deleted and ''sulfur 0.035'' is inserted in lieu thereof;

(J) In subdivision (b)(xxiii), ''HRB of 87;'' is deleted and ''HRB of not over 87;'' is inserted in lieu thereof; ''tensile strength of 500 N/mm ^{2} ''is deleted and ''tensile strength of 500 N/mm^2 or greater'' is inserted in lieu thereof; ''elongation of 30 percent'' is deleted and ''elongation of 30 percent or more'' is inserted in lieu thereof; and ''yield ratio of 80 percent;'' is deleted and ''yield ratio of not over 80 percent;'' is inserted in lieu thereof;

(K) In subdivision (b)(xxiv), ''X–139 or'' is deleted;

(L) In subdivision (b)(xxvii)(A), (i) ''silicon 0.03'' is deleted and ''silicon of not over 0.03'' is inserted in lieu thereof, (ii) ''phosphorus 0.02'' is deleted and ''phosphorus of not over 0.02'' is inserted in lieu thereof, and (iii) ''sulfur 0.023 (aim 0.018)'' is deleted and ''sulfur of not over 0.023'' is inserted in lieu thereof;

(M) In subdivision (b)(xxvii)(B), the language after ''by weight):'' and ending with ''molybdenum 0.01;'' is deleted and the following new language is inserted in lieu thereof: ''carbon of not over 0.08, silicon of not over 0.03, manganese of not over 0.45, phosphorus of not over 0.02, sulfur of not over 0.02, aluminum of not over 0.08, arsenic of not over 0.02, copper of not over 0.05, nitrogen of not over 0.004, chromium of not over 0.05, nickel of not over 0.05 and molybdenum of not over 0.01;''; ''elongation: 25%'' is deleted and ''elongation of 25 percent or more'' is inserted in lieu thereof; and ''nonmetallic inclusions: 0.20 pcs./m^2'' is deleted and ''nonmetallic inclusions of not over 0.20 pcs/m^2'' is inserted in lieu thereof;

(N) In subdivision (b)(xxxii)(B), ''7209.17.00,'' is inserted in numerical sequence in the parenthetical enumeration of subheadings;

(O) In subdivision (b)(xxxiv)(C), ''12.63 mm'' is deleted and ''12.6365 mm'' is inserted in lieu thereof;

(P) In subdivision (b)(xxxiv)(D), ''7.01 mm—11.98 mm'' is deleted and ''7.00 mm—12.00 mm'' is inserted in lieu thereof, and ''with narrow tolerances +/-0.03985 mm—0.05990 mm'' is deleted and ''with tolerances +/-0.04 mm—0.06 mm'' is inserted in lieu thereof;

(Q) In subdivision (b)(xxxiv)(E), ''39.8'' is deleted and ''40.0'' is inserted in lieu thereof, ''3.05'' is deleted and ''3.0'' is inserted in lieu thereof, '''121.3'' is deleted and ''120.0'' is inserted in lieu thereof, ''44.9'' is deleted and ''45.0 mm'' is inserted in lieu thereof, ''2.53'' is deleted and ''2.5'' is inserted in lieu thereof, and ''114'' is deleted and ''112.5'' is inserted in lieu thereof;

(R) In subdivision (b)(xxxix)(E), ''20 g/mm^2 (minimum 17 g/mm^2, maximum 26 g/mm^2'' is deleted and ''20 g/m^2 (minimum 17 g/m^2, maximum 26 g/m^2;'' is inserted in lieu thereof;

(S) In subdivision(b)(xl)(A), the phrase ''zinc-nickel alloy electroplating,'' is deleted;

(T) In subdivision(b)(xli), ''22.4 g/m^2 box equivalent'' is deleted and ''11.2 g/m^2'' is inserted in lieu thereof; ''5.38 mg/m^2'' is deleted and ''5.4 mg/m^2'' is inserted in lieu thereof; ''CAT 5'' is deleted and ''CA T–5'' is inserted in lieu thereof; ''22.4/2.24 g/m^2 coating'' is deleted and ''11.2/1.1 g/m^2 coating'' is inserted in lieu thereof; ''2.24 g/m^2 coating side'' is deleted and ''1.1 g/m^2 coating side'' is inserted in lieu thereof; ''0.208 mm thickness and 887.4 mm by 806.4 mm scroll cut dimensions'' is deleted and ''0.21 mm thickness and 887 mm by 806.4 mm scroll cut dimensions'' is inserted in lieu thereof; ''0.208 mm thickness and 868.4 mm by 738.5 mm scroll cut dimensions'' is deleted and ''0.208 mm thickness and 868 mm by 738.5 mm scroll cut dimensions'' is inserted in lieu thereof; and ''0.300 mm thickness and 776.3 mm by 866.8 mm scroll cut dimensions'' is deleted and ''0.30 mm thickness and 776 mm by 866.8 mm scroll cut dimensions'' is inserted in lieu thereof;

(U) In subdivision (b)(xlviii), ''457.2 mm or more'' is deleted and ''457.0'' is inserted in lieu thereof;

(V) In subdivision (b)(lii)(A), ''0.279 mm to 0.300 mm'' is deleted and ''0.274 mm to 0.295 mm'' is inserted in lieu thereof; and

(W) In subdivision (d)(ii)(D), ''India and Romania'' is deleted and ''India, Romania and Thailand'' is inserted in lieu thereof.

10. Effective on and after March 20, 2002, the following modifications are made in subchapter III of chapter 99:

(A) Subheading 9903.72.74 is modified by deleting ''X–139 or'';

(B) The superior text to subheadings 9903.72.85 through 9903.73.04 is modified by deleting ''if not in coils of a thickness of less than 4.75 mm (provided'' and by inserting in lieu thereof '', and if not in coils then of a thickness of less than 4.75 mm (all the foregoing provided';

(C) Subheading 9903.73.76 is deleted; and

(D) The following new subheadings are each inserted in numerical sequence, with the material inserted in the columns headed ''Heading/Subheading'', ''Article Description'', ''Rates of Duty 1–General'', ''Rates of Duty 1–Special'' and ''Rates of Duty 2'', respectively:

	[Bars, ...;]			
	[Goods ....;]			
''9903.73.45	Enumerated in U.S. note 11(b)(xi) to this subchapter and designated as X–083.	No change	No change	No change
9903.73.46	Enumerated in U.S. note 11(b)(xxii) to this subchapter and designated as X–134.	No change	No change	No change
	[Bars ....;]			
9903.74.09	Goods excluded from the application of relief by U.S. note 11(b)((xlvii) to this subchapter, designated as X–177.	No change	No change	No change

[FR Doc. 02–13991 Filed 6–3–02; 8:45 am]
BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for June 18–19, 2002, beginning at 8:30 a.m. Arrange for oral presentations by June 14.

ADDRESSES: Boeing Commercial Airplane Group, 535 Garden Avenue North, Building 10–16, Room 12–C4, Renton, WA

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075, or e-mail at *effie.upshaw@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held June 18–19 in Seattle Washington.

The agenda will include:

June 18, 2002

- Opening remarks
- FAA/Joint Aviation Authorities Conference report
- FAA report
- JAA report, including status of Single Worldwide Certification Code and establishment of European Aviation Safety Agency
- Transport Canada report
- Executive Committee report
- Harmonization Management Team report
- ARAC tasking priorities discussion
- Design for Security Harmonization Working Group (HWG) report and approval

• Flight Controls HWG report and approval
• Loads &Dynamics HWG report and approval
• Human Factors Harmonization Working Group (HWG) report
• System Design and Analysis HWG report
• Electrical Systems HWG report and update on Aging Transport Systems Rulemaking Advisory Committee activity

June 19

• General Structures HWG report and approval
• Airworthiness Assurance Working Group report
• Powerplant Installation HWG report and approval
• Ice Protection HWG report
• Written reports, as required, from the following HWGs: Electromagnetic Effects, Flight Test, Engine, Mechanical Systems, Avionics, Seat Test, Flight Control, and Flight Guidance
• Extended Range with Two-Engine Aircraft tasking update

Five working groups will be seeking approval of working group reports:

1. The Design for Security HWG for a report addressing the following areas in Amendment 97 to Annex 8 to the Convention on International Civil Aviation: survivability of systems, fire suppression, cabin smoke extraction, direction of smoke from the cockpit, least risk bomb location (identification), and least risk bomb location (design);
2. The Flight Controls HWG for a report addressing flight control system failures or jamming;
3. The Loads and Dynamics HWG for a report addressing flight loads validation;
4. The General Structures HWG for a report addressing damage-tolerance and fatigue evaluation of structures; and
5. The Powerplant Installation HWG for a report addressing the automatic takeoff thrust control system.

Attendance is open to the public, but will be limited to the availability of meeting room space and telephone lines. Visitor badges are required to gain entrance to the Boeing building where the meeting is being held. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than June 14. Please provide the following information: full legal name, country of citizenship, and name of your company, if applicable.

For those participating by telephone, the call-in number is (206) 655–4990, Passcode 6975#. Details are also available on the ARAC calendar at *http://www.faa.gov/avr/arm/araccal/htm.* To insure that sufficient telephone lines are available, please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of your intent by June 14. Anyone participating by telephone will be responsible for paying long-distance charges.

The public must make arrangements by June 14 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by provding copies at the meeting. Copies of the documents to be presented to ARAC for decision or as recommendations to the FAA may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on May 29, 2002.

Tony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 02–13966 Filed 6–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Occupant Safety Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss occupant safety (OS) issues.

DATES: The meeting is scheduled for June 20, 2002, begininig at 8:30 a.m. Arrange for oral presentations by June 14.

ADDRESSES: Boeing Commercial Airplane Group, 535 garden Avenue North, Building 10–16, Room 12–C4, Renton, WA.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7626; fax: (202) 267–5075, or e-mail: *effie.upshaw@faa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held June 20 in Renton, WA.

The agenda will include:

• Opening remarks
• Membership update
• Action Item review
• FAA report
• Joint Aviation Authorities report
• Transport Canada report
• Executive Committee report
• Cabin Safety Harmonization Working Group report
• Draft Terms of Reference for Cabin Environment tasking
• Passenger Safety Card discussion

Attendance is open to the public, but will be limited to the availability of meeting room space and telephone lines. Visitor badges are required to gain entrance to the Boeing building where the meeting is being held. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section by June 14. Please provide the following information: full legal name, country of citizenship, and name of your company, if applicable.

For those participating by telephone, the call-in number is (206) 655–4990, Passcode 6975#. Details are also available on the ARAC calendar at *http://www.faa.gov/avr/arm/araccal/htm.* To insure that sufficient telephone lines are available, please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of your intent by June 14. Anyone participating by telephone will be responsible for paying long-distance charges.

The public must make arrangements by June 14 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by providing copies at the meeting. Copies of the documents to be presented to ARAC for decision or as recommendations to the FAA may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washinton, DC on May 29, 2002.

Tony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 02–13967 Filed 6–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Technical Standard Order (TSO)–C135, Transport Airplane Wheels and Wheel and Brake Assemblies

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of Technical Standard Order.

SUMMARY: This action announces the availability of TSO–C135. This TSO prescribes the minimum performance standards that transport category airplane wheels and wheel and brake assemblies must meet to be identified with the applicable TSO marking. The FAA published the Revision of Braking Systems Airworthiness Standards final rule and a Notice of Issuance for the Advisory Circular on the same subject on April 24, 2002, in the **Federal Register** (67 FR 20422).

DATE: The subject technical standard order was issued by the Manager, Aircraft Certification Service, on May 2, 2002.

FOR FURTHER INFORMATION CONTACT: Mahinder K. Wahi, FAA, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2142; facsimile (425) 227–1320, e-mail *mahinder.wahi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The standards of this TSO apply to transport category airplane wheels and wheel and brake assemblies used for any new TSO application submitted after the effective date of this TSO. Wheels and wheel and brake assemblies currently approved for 14 CFR part 25 airplanes under TSO–C26c authorization may continue to be manufactured under the provisions of their original approval. However, under § 21.611(b) of Title 14, Code of Federal Regulations (14 CFR), any major design change to a wheel or a wheel and brake assembly previously approved under TSO–C26c will require a new authorization under this TSO.

How To Obtain A Copy of the TSO

The TSO–135 ''Minimum Performance Specification for Transport Airplane Wheel and Wheel and Brake Assemblies,'' may be obtained from the U.S. Department of Transportation, Subsequent Distribution Office, SVC–121.23, Ardmore East Business Center, 3341 Q 7th Avenue, Landover, MD 20785.

An electronic copy of TSO–C135 may be downloaded using the Internet at the following address: *http://www.faa.gov/certification/aircraft/air__index.htm* or by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or be calling (202) 267–9680. Make sure to identify the TSO number.

Issued in Washington, DC, on May 28, 2002.

David W. Hempe,

Manager, Aircraft Engineering Division.

[FR Doc. 02–13965 Filed 6–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Warren and Edmonson Counties in Kentucky

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of planning study.

SUMMARY: The FHWA is issuing this notice to advise the public that the Kentucky Transportation Cabinet (KYTC), in cooperation with the Federal Highway Administration (FHWA), is initiating a planning study for the following highway project ''Interstate 66 (I–66) from the William H. Natcher Parkway to the Louie B. Nunn Parkway''.

FOR FURTHER INFORMATION CONTACT: Evan J. Wisniewski, Project Development Team Leader, Federal Highway Administration, 330 West Broadway, Frankfort, KY 40601, Telephone: (502) 223–6740 or Ms. Annette Coffey, Director, Division of Planning, Kentucky Transportation Cabinet, 125 Holmes Street, Frankfort, KY, 40622, Telephone: (502) 564–7183.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gpv//fedreg* and the Government Printing Office's web page at *http://www.acess.gpo.gov.nara.*

Background

The I–66 project is part of a proposed Transamerica Transportation Corridor from the Atlantic Coast of Virginia to the Pacific Coast in California, in accordance with the legislative intent of the Intermodel Surface Transportation Efficiency Act (ISTEA) of 1991 and subsequent Federal transportation legislation. This highway is to pass through southern Kentucky and will generally be centered on the cities of Pikeville, Jenkins, Hazard, London, Somerset, Columbia, Bowling Green, Hopkinsville, Benton, and Paducah. Segments of the corridor across Kentucky are in various stages of project development ranging from corridor studies to final design. The planning study will address alternatives and issues related to the development of an interstate highway that would provide continuity of I–66 between the Natcher and Nunn Parkways and improve accessibility throughout the region.

During the development of this planning study, comments will be solicited from appropriate Federal, state, and local agencies, as well as other interested persons and the general public, in accordance with requirements set forth in the National Environmental Policy Act NEPA) of 1969 and subsequent Federal regulations and guidelines developed by the Executive Office of the President's Council on Environmental Quality and the United States Department of Transportation for the implementation of the NEPA process.

This planning study will include a scoping process for the early identification of potential alternatives for, and environmental issues and impacts related to, the proposed project. At this time, the level of environmental documentation that will ultimately be prepared is not known. However, if an Environmental Impact Statement (EIS) is prepared for the proposed project in the future, the information gained through the scoping process in this planning study may be used as input to the scoping process for the development of that EIS. If an EIS is prepared in the future, written comments on the scope of alternatives and impacts will still be considered at that time, after the filing of the Notice of Intent (NOI).

(Catalog of Federal Domestic Assistance Program Number 20.205, ''Highway Planning and Construction''. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 30, 2002.

Jose Sepulveda,

Kentucky Division Administrator, Frankfort.

[FR Doc. 02–13886 Filed 6–3–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Warren County in Kentucky

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of planning study.

SUMMARY: The FHWA is issuing this notice to advise the public that the Kentucky Transportation Cabinet (KYTC), in cooperation with the Federal Highway Administration (FHWA), is initiating a planning study for the following proposed highway project: ''Eastern Beltline of Bowling Green, Kentucky from Scottsville Road (US 231) to Interstate 65 (I–65)''.

FOR FURTHER INFORMATION CONTACT: Evan J. Wisniewski, Project Development Team Leader, Federal Highway Administration, 330 West Broadway, Frankfort, KY 40601, Telephone: (502) 223–6740 or Ms. Annette Coffey, Director, Division of Planning, Kentucky Transportation Cabinet, 125 Holmes Street, Frankfort, KY 40622, Telephone (502) 564–7183.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http://www.access.gpo.gov.nara.*

Background

This planning study is to determine the feasibility of an Eastern Beltline of Bowling Green, Kentucky. The Bowling Green Urban Transportation Study has identified both and Eastern and Northern Beltline as a need since 1972. The Eastern Beltline is to be located east of I–65 and is to connect US 231 (Scottsville Road) with I–65. This planning study will consider how the Beltline projects should be coordinated with a proposed Interstate 66 (I–66) project and if segments of one project can be incorporated into the other project.

During the development of this planning study, comments will be solicited from appropriate Federal, state, and local agencies, as well as other interested persons and the general public, in accordance with requirements set forth in the National Environmental Policy Act (NEPA) of 1969 and subsequent Federal regulations and guidelines developed by the Executive Office of the President's Council on Environmental Quality and the United States Department of Transportation for the implementation of the NEPA process.

This planning study will include a scoping process for the early identification of potential alternatives for, and environmental issues and impacts related to, the proposed project. At this time, the level of environmental documentation that will ultimately be prepared is not known. However, if an Environmental Impact Statement (EIS) is prepared for the proposed project in the future, the information gained through the scoping process in this planning study may be used as input to the scoping process for the development of that EIS. If an EIS is prepared in the future, written comments on the scope of alternatives and impacts will still be considered at that time, after the filing of the Notice of Intent (NOI).

(Catalog of Federal Domestic Assistance Program Number 20.205, ''Highway Planning and Construction''. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 30, 2002.

Jose Sepulveda,

Kentucky Division Administrator, Frankfort.

[FR Doc. 02–13887 Filed 6–3–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of an Environmental Impact Statement for the Union Station Master Plan and vicinity in downtown Denver, CO

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) is issuing this notice to advise agencies and the public that, in accordance with the National Environmental Policy Act (NEPA), FTA as lead agency, the Federal Highway Administration (FHWA) and the Federal Railroad Administration (FRA) as cooperating agencies, the Regional Transportation District (RTD), in conjunction with the City and County of Denver (CCD), the Denver Regional Council of Governments (DRCOG), and the Colorado Department of Transportation (CDOT), intend to prepare an Environmental Impact Statement (EIS) to evaluate the development alternatives and operation of a Master Plan for a mixed-use, intermodal transportation center that encompasses the Union Station property and adjacent vicinity in downtown Denver, Colorado. The project study area encompasses approximately 20-acres of land in the lower downtown area of Denver.

Additionally as part of the EIS, an assessment of the effects on historic properties within the study area, including the Denver Union Station, will be conducted in accordance with Section 106 of the National Historic Preservation Act (NHPA).

DATES: One scoping meeting will be held on the date and location shown below:

Date: June 20, 2002
Time: 5:30 pm to 8:00 pm
Location: Colorado Convention Center, Ball Room #4
Address: 700 14th Street, Denver, Co. 80202

People with special needs may contact the project Hot Line at (303) 322–3320, 24-hours prior to the date of the scoping meeting for further assistance.

An informational brochure describing the purpose of the Master Plan and EIS, the project location, proposed alternatives, and the impact area to be evaluated, will be mailed to affected federal, state, and local agencies and made available to those people attending the scoping meeting. Others may request scoping materials by accessing the project website at *www.DenverUnionStation.org,* by calling the Hot Line at (303) 322–3320, or by contacting Mr. Dave Shelley, Project Manager, Regional Transportation District, at the address listed below.

Written comments on the scope of the EIS, including the alternatives to be considered and the impacts to be studied, should be sent to Dave Shelley, Project Manager, Regional Transportation District by July 5, 2002.

ADDRESSES: Please forward your comments to Mr. Dave Shelley, Project Manager, Regional Transportation District, 1600 Blake Street, Denver, Colorado 80202–1399. Telephone: (303) 299–2408, or *dave.shelley@rtd-denver.com*

FOR FURTHER INFORMATION Contact: Mr. David Beckhouse, Community Planner, Federal Transit Administration, (303) 844–3242.

SUPPLEMENTARY INFORMATION:

Scoping Process:

Project scoping will be accomplished through a public scoping meeting and correspondence with interested people, organizations, and local, regional, state and federal agencies. Public scoping meetings will be advertised in local newspapers and through other media. The purpose of the scoping process is to determine the scope of issues to be addressed and for identifying significant issues related to the proposed action. The development of the Master Plan and EIS will include opportunities for public participation and comment throughout the study process, so that interested individuals may contribute to the decision-making process.

Description of Master Plan and Transportation Needs

A Master Plan will be developed to address what role the Union Station can play as an extremely efficient center for interconnecting various modes of transportation (cross-country, regional, and local bus and rail transit), and influencing land use by both the private and public sectors. All the activities, existing and proposed developments, and potential transportation terminals and modes, which are envisioned for the Union Station area, must co-exist efficiently and effectively. Therefore, a Master Plan must be created to identify and evaluate all the proposals and plans for the Union Station area. This evaluation will include, in terms of their impacts on each other within the context of the Union Station and its environs, the full build-out of the area, and how the alternatives will blend into the overall development of Union Station and its environs. Components of the plan include: the mixture of land uses, the magnitude of development, and the incorporation of new development into what has been built and planned for the Union Station environs. Special emphasis will be placed on transportation issues such as access, circulation, and parking. It is the intent of this project to use the Master Plan as the basis for any necessary rezoning of the study area to allow the build out of the plan.

Proposed Action

The EIS scoping process will include an evaluation of alternatives relative to the development of the Master Plan in order to derive a proposed action.

Public Involvement

A comprehensive public involvement program has been developed. The program includes a project web site (*www.DenverUnionStation.org*); a 24-hour Hot Line (303) 322–3320, outreach to local and county officials and community and civic groups; a public scoping process to define the issues of concern among all parties interested in the project; a public hearing upon release of the draft environmental impact statement (DEIS); and development and distribution of a project newsletters.

Alternatives

FTA and RTD propose to evaluate the no-action alternative and other reasonable alternatives identified during the public scoping and master planning processes that provide transportation benefits while reducing or avoiding adverse impacts. Interested individuals, organizations, and agencies are invited and encouraged to participate in defining the alternatives to be evaluated and related issues of concern.

Probable Effects and Potential Impacts for Analysis

The FTA and RTD will evaluate all environmental, social and economic impacts of the alternatives analyzed in the EIS. The impact areas to be addressed include land use, visual/aesthetic values, ecosystems, mineral resources, cultural and historical resources, water quality, floodplains and drainage; air quality; noise and vibration, traffic and parking, hazardous materials, utilities, energy use and conservation, public safety and security; and community and economic impacts. The EIS will evaluate potential environmental justice issues as well as secondary, cumulative, and construction-related impacts. The need for right-of-way acquisitions and relocations will also be evaluated. Alternative alignments, designs, station locations, and other measures to avoid, minimize, and mitigate adverse impacts will be developed and evaluated.

FTA Procedures

In accordance with FTA policy, all Federal laws, regulations, and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508, and 23 CFR part 771), the 1990 Clean Air Act Amendments, section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and section 4(f) of the DOT Act, will be addressed to the maximum extent practicable during the NEPA process. In addition, RTD may seek § 5309 New Starts funding for the project or related projects that may terminate within the project area and will therefore be subject to the FTA New Starts regulations (49 CFR part 611). This New Starts regulation requires submission of certain specified information to FTA to support an RTD request to initiate preliminary engineering, which is normally done in conjunction with the NEPA process.

Issued on: May 29, 2002.

Lee O. Waddleton,

FTA Regional Administrator.

[FR Doc. 02–13971 Filed 6–3–02; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW (Pension and Parents DIC Participants)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Planning and Analysis, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Planning and Analysis, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection of information, and allow 60 days for public comment in response to the notice. This notice solicits comments on information that will be collected by a telephone survey to assess the effectiveness and efficiency of VA programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 5, 2002.

ADDRESSES: Submit written comments on the collection of information to John A. Corso, Office of Assistant Secretary for Planning and Analysis (008B), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420 or e-mail *john.corso@mail.va.gov.* Please refer to ''OMB Control No. 2900–

NEW (Pension and Parents DIC Participants)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: John A. Corso at (202) 273–5927 or FAX (202) 273–5993.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, the Office of Planning and Analysis invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of VA's estimate of the burden of the proposed collection of information; (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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Survey of Department of Veterans Affairs Pension and Parents DIC Participants.

OMB Control Number: None assigned.

Type of Review: New collection.

Abstract: The purpose of this evaluation is to assess the effectiveness and efficiency of the VA Pension and Parents' DIC programs. These are needs-based programs that provide benefits to wartime veterans who are permanently and totally disabled due to non-service-connected causes, surviving spouses of deceased wartime veterans, and needy parents of veterans whose deaths were service-connected.

Affected Public: Individuals or households.

Estimated Time Per Respondent and Annual Burden: 2,871 hours.

a. Veterans @ 45 minutes per response = 981.75 hours.

b. Spouses @ 45 minutes per response = 978 hours.

c. Parents @ 45 minutes per response = 911.25 hours.

Frequency of Response: One-time.

Estimated Number of Respondents: 3,828.

a. Veterans—1,309.

b. Spouses—1,304.

c. Parents—1,215.

Dated: March 20, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–13875 Filed 6–3–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 67, No. 107

Tuesday, June 4, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative Review

Correction

In notice document 02–13391 beginning on page 37391 in the issue of Wednesday May 29, 2002, make the following correction:

On page 37391, in the third column, under the **EFFECTIVE DATE:** heading, ''June 28, 2002'' should read ''May 29, 2002''.

[FR Doc. C2–13391 Filed 6–3–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
June 4, 2002

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 29 and 52
Federal Acquisition Regulation; Federal, State, and Local Taxes; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 29 and 52

[FAR Case 2000–016]

RIN 9000–AJ39

Federal Acquisition Regulation; Federal, State, and Local Taxes

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to clarify the prescriptions for use of clauses relating to Federal, State, and local taxes. In addition, the rule deletes the clause regarding taxes-contracts performed in U.S. possessions or Puerto Rico, and updates and moves the definitions of ''local taxes''.

DATES: Interested parties should submit comments in writing on or before August 5, 2002 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: *farcase.2000–016@gsa.gov.*

Please submit comments only and cite FAR case 2000–016 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, at (202) 501–3221. Please cite FAR case 2000–016.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the FAR to clarify the prescriptions at FAR 29.401 for use of FAR clauses 52.229–3, Federal, State, and Local Taxes; 52.229–4, Federal, State, and Local Taxes (Noncompetitive Contract); and 52.229–5, Taxes-Contracts Performed in U.S. Possessions or Puerto Rico. The contracting officer is directed to insert the clause at 52.229–3, Federal, State, and Local Taxes, in fixed-price contracts exceeding the simplified acquisition threshold. However, for noncompetitive fixed-price contracts the contracting officer may instead insert the clause 52.229–4, Federal, State, and Local Taxes (State and Local Adjustments) if the contracting officer determines that the contract price would otherwise include an inappropriate amount in anticipation of potential postaward change in state or local taxes. In addition, the rule renames the clause at 52.229–4, deletes the clause at 52.229–5, moves the definition of ''local taxes'' from the clause at FAR 52.229–5 to the clauses at 52.229–3 and 52.229–4, and updates the definition by adding U.S. territories and the Commonwealth of the Northern Mariana Islands, which are no longer considered possessions of the United States.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed 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 the amendments clarify the intent of current policies and clauses. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 29 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000–016), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose 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 29 and 52

Government procurement.

Dated: May 28, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 29 and 52 as set forth below:

1. The authority citation for 48 CFR parts 29 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 29—TAXES

2. In section 29.305, revise paragraph (b)(1) to read as follows:

29.305 State and local tax exemptions.

* * * * *

(b) * * *

(1) Under a contract containing the clause at 52.229–3, Federal, State, and Local Taxes, or at 52.229–4 Federal, State, and Local Taxes (State and Local Adjustments), in accordance with the terms of those clauses.

* * * * *

3. Revise the heading and text of section 29.401–3 to read as follows:

29.401–3 Federal, State, and local taxes.

(a) Except as provided in paragraph (b) of this section, insert the clause at 52.229–3, Federal, State, and Local Taxes, in solicitations and contracts if-

(1) The contract is to be performed wholly or partly within the United States, its possessions or territories, Puerto Rico, or the Northern Mariana Islands;

(2) A fixed-price contract is contemplated; and

(3) The contract is expected to exceed the simplified acquisition threshold.

(b) In a noncompetitive contract that meets all the conditions in paragraph (a) of this section, the contracting officer may insert the clause at 52.229–4, Federal, State, and Local Taxes (State and Local Adjustments), instead of the clause at 52.229–3, if the price would otherwise include an inappropriate amount in anticipation of potential postaward change(s) in State or local taxes.

29.401–4 and 29.401–5 [Removed]

29.401–6 [Redesignated as 29.401–4]

4. Remove sections 29.401–4 and 29.401–5, and redesignate section 29.401–6 as 29.401–4.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.229–3 as follows:

a. Revise the date of the clause;

b. Remove the paragraph designation (a) and add a new paragraph (a); and

c. In the newly designated paragraph (a) amend the definitions ''Contract date'', ''All applicable Federal, State, and local taxes and duties'', ''After-imposed Federal tax'', and ''After-relieved Federal tax'' by removing '', as used in this clause,'' and placing these definitions in alphabetical order; and adding, in alphabetical order, the definition ''Local taxes''.

The revised and added text read as follows:

52.229–3 Federal, State, and Local Taxes.

* * * * *

Federal, State, and Local Taxes (Date)

(a) As used in this clause—

* * * * *

Local taxes includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

* * * * *

6. Amend section 52.229–4 as follows:

a. Revise the section and clause headings, and the introductory paragraph;

b. Remove the designation for paragraph (a) and add a newly designated paragraph (a);

c. In the newly designated paragraph (a) amend the definitions ''Contract date'', ''All applicable Federal, State, and local taxes and duties'', ''After-imposed Federal tax'', and ''After-relieved Federal tax'' by removing ''as used in this clause,'' and placing the definitions in alphabetical order; and adding, in alphabetical order, the definition ''Local taxes''.

The revised and added text read as follows:

52.229–4 Federal, State, and Local Taxes (State and Local Adjustments).

As prescribed in 29.401–3, insert the following clause:

Federal, State, and Local Taxes (State and Local Adjustments) (Date)

(a) As used in this clause—

* * * * *

Local taxes includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

* * * * *

52.229–5 [Removed and reserved]

7. Remove and reserve section 52.229–5.

8. Amend section 52.229–10 by removing from the introductory text ''29.401–6(b)'' and adding ''29.401–4(b)'' in its place; by revising the date of the clause; and by removing from paragraph (h) ''29.401–6(b)(1)'' and adding ''29.401–4(b)(1)'' in its place.

52.229–10 State of New Mexico Gross Receipts and Compensating Tax.

* * * * *

State of New Mexico Gross Receipts and Compensating Tax (Date)

* * * * *

[FR Doc. 02–13867 Filed 6–3–02; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Tuesday,
June 4, 2002

Part III

Department of Education

Office of Vocational and Adult Education, Community Technology Centers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.341A]

Office of Vocational and Adult Education, Community Technology Centers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions you need to apply for a grant under this competition.

Purpose of Program: The purpose of the Community Technology Centers program is to assist eligible applicants to create or expand community technology centers that will provide disadvantaged residents of economically distressed urban and rural communities with access to information technology and related training.

For FY 2002, the competition for new awards focuses on projects that fulfill the purpose of the program and that address the priorities we describe in the PRIORITIES section of this notice.

Eligible Applicants: Community-based organizations, including faith-based organizations, State and local educational agencies, institutions of higher education, entities such as foundations, libraries, museums and other public and private nonprofit organizations or for-profit businesses. To be eligible, an applicant must also have the capacity to significantly expand access to computers and related services for disadvantaged residents of economically distressed urban and rural communities (who would otherwise be denied such access).

An individual elementary or secondary school is not eligible to apply for a grant unless it is a charter school that is a local educational agency under State law or it is a school funded by the Bureau of Indian Affairs that meets the requirements established by 20 U.S.C. 9101(26)(C). A group of eligible entities is also eligible to receive a grant if the group follows the procedures for group applications in 34 CFR 75.127–129 of EDGAR.

Note: An eligible applicant may submit only one application for this competition, but may propose to carry out projects or activities at multiple sites in a single application.

Deadline for Transmittal of Applications: July 19, 2002.

Deadline for Intergovernmental Review: September 17, 2002.

Notification of Intent to Apply for Funding: We can expedite the review of applications and the final award of funds if we know beforehand approximately how many entities intend to apply for funding. Therefore, we strongly encourage each potential applicant to send by June 28, 2002 a brief notification of your intent to submit an application to the following address: *ctc@ed.gov*.

Please put ''Notice of Intent'' in the subject line. The notification of intent to apply for funding is optional and should not include information regarding the proposed application. Eligible applicants that fail to provide the notification can still submit an application for funding.

Estimated Available Funds: $15,000,000.

Cost Share Requirement: Recipients of the one-year grants under the program must share in the cost of the activities assisted under the grant. Grant recipients must make available non-Federal contributions in cash or in kind, as authorized under section 5512(c) of ESEA, of not less than 50 percent of the cost of activities assisted under the grant.

Estimated Range of Awards: $75,000—$300,000.

Estimated Average Size of Awards: $180,000.

Estimated Number of Awards: 83.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the required application contents and the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 40 pages using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, table of contents, the information addressing section 427 of GEPA, the resumes, the bibliography, or the letters of support.

However, you must include all of the application narrative in Part III.

We will reject your application if:

You apply these standards and exceed the page limit; or

You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99.

SUPPLEMENTARY INFORMATION:

Description of Program

These grants are authorized by Title V, Part D, Subpart 11, section 5511 *et seq*. of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (20 U.S.C. 7263).

Grant recipients must use funds provided under this program to create or expand community technology centers that expand access to information technology and related training for disadvantaged residents of distressed urban and rural communities. The Community Technology Centers program is fundamentally an education program. The focus of successful projects will be on using technology as a tool to improve learning outcomes, rather than on simply providing individuals with access to technology as an end in itself. Teaching and learning should be at the core of each project's activities.

Program Evaluation

Recipients also must use grant funds to carry out an evaluation of the effectiveness of the project. Effectiveness should be measured on the basis of the actual learning gains achieved by project participants as determined by standardized assessments or other objective measures. The effectiveness of adult education and family literacy instruction provided by each project should be measured on the basis of the literacy skill gains made by the adult learners served by the project, as well as other outcomes, such as the receipt of a high school diploma or its equivalent, placement in employment or enrollment in postsecondary education.

Reporting Requirements

Applicants should be aware that, following the award of grants, we anticipate establishing reporting requirements for projects funded under this competition that will collect data on these and other outcomes for adult learners, using similar procedures as those used for the National Reporting System (NRS) for the Adult Education and Family Literacy Act. To determine educational gain for NRS, local adult education programs assess students at

intake to determine their educational functioning level. There are four educational functioning levels for adult basic education, two for adult secondary education, and six levels for English-as-a-second language students. Each level describes a set of skills and competencies that students entering at that level can do in the areas of reading, writing, numeracy, speaking, and listening. Using these descriptors as guidelines, programs determine an initial level in which to place an entering student based on a standardized assessment procedure. After a pre-determined amount of instruction or time period, the program conducts a follow-up assessment of the student and uses the functioning level descriptors to determine whether the student has advanced one or more levels or is progressing within the same level. More information about the NRS procedures is available at: *http://www.air-dc.org/nrs/DraftGuidelines.htm.*

Consistent with the Paperwork Reduction Act, we will provide an opportunity for public review and comment prior to establishing any reporting requirements.

Applicants should anticipate and plan for the costs of student assessments and other associated evaluation activities in preparing the proposed budgets they submit with their applications.

Adult Education and Literacy

As the nation moves from an industrial-based to a service- and knowledge-based economy, there is widespread agreement that adults and youth need a higher level of academic knowledge, greater competency in information analysis and problem-solving, and a different mix of technical and technology skills. Unable to gain a foothold in this emerging new economy are the millions of adults who lack basic skills, proficiency in English, or a high school diploma or its equivalent.

Literacy in the Labor Force (1999), an analysis of data collected as part of the 1992 National Adult Literacy Survey, found that adults with the lowest literacy skills were four to seven times more likely to be unemployed than those with the highest literacy skills. When individuals with the lowest literacy skills did obtain employment, they earned nearly a third less than adults with the highest literacy skills. The Literacy in the Labor Force report is available on the website of the National Center for Education Statistics at: *http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=1999470.*

Community technology centers can provide new opportunities for these individuals to upgrade their skills so that they can move into postsecondary education and obtain better-paying jobs. Technology-supported instruction can increase access to adult education by providing learning opportunities at convenient times and locations. Instruction can be individualized to suit different learning styles, interests and levels of mastery. Learning time can be used more efficiently, enabling adult learners to move at their own pace. In some cases, technology-facilitated instruction can help students learn technology and technical skills at the same time that it addresses literacy needs.

In addressing the absolute priority this competition establishes for projects that provide adult education and family literacy activities, applicants may provide either or both adult education and family literacy, depending upon their own priorities and resources and the needs of the communities they serve. We also wish to emphasize that adult basic and adult secondary education instruction, and not only instruction designed to prepare individuals for the GED examination, are allowable uses of funds.

Other Authorized Uses of Funds

Grant funds also may be used to carry out other activities authorized by section 5513(b) of the statute, such as career development and job preparation activities, after-school academic enrichment activities for children and youth, and small business assistance activities. Other authorized activities include, among other things, support for personnel, equipment, networking capabilities, and other infrastructure costs. No funds may be used for construction costs.

Definitions: In addition to definitions in the statute and EDGAR, the following definitions apply:

Adult education means services or instruction below the postsecondary level for individuals—

(a) Who have attained 16 years of age;

(b) Who are not enrolled or required to be enrolled in secondary school under State law; and

(c) Who—

(1) Lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;

(2) Do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or

(3) Are unable to speak, read, or write the English language.

Economically distressed means a county or equivalent division of local government of a State (or a portion thereof) in which, according to the most recent available data from the United States Bureau of the Census, a significant percentage of the residents have an annual income that is at or below the poverty level.

Language instruction educational programs means programs of instruction designed to help adults and out-of-school youth of limited English proficiency achieve competence in the English language.

Application Narrative: Applicants must submit an application that includes:

(a) A description of the proposed project, including a description of the magnitude of the need for the services and how the project would expand access to information technology and related services to disadvantaged residents of an economically distressed urban or rural community.

(b) A demonstration of—

(1) The commitment, including the financial commitment, of entities (such as institutions, organizations, business and other groups in the community) that will provide support for the creation, expansion, and continuation of the proposed project; and

(2) The extent to which the proposed project coordinates with other appropriate agencies, efforts, and organizations providing services to disadvantaged residents of an economically distressed urban or rural community.

(c) A description of how the proposed project would be sustained once the Federal funds awarded under the grant end.

(d) A plan for the evaluation of the program, which shall include benchmarks to monitor progress toward specific project objectives.

Priorities

Absolute Priority: This competition focuses on projects designed to meet a priority that we have chosen from allowable activities specified in the program statute (see 34 CFR 75.105(b)(2)(v) and section 5513(b)(3)(B)(i) of the ESEA (20 U.S.C. 7263b(b)(3)(B)(i)).

Specifically, this competition establishes an absolute priority for projects that, at a minimum, provide adult education and family literacy activities through technology and the Internet, including General Education Development (GED), Language Instruction Educational Programs, and adult basic education classes or programs. Under 34 CFR 75.105(c)(3), we consider only applications that meet this absolute priority.

This absolute priority does not preclude projects from offering additional services authorized by the statute. However, they must, at a minimum, provide adult education and family literacy activities through technology and the Internet.

Competitive Priority: Within this absolute priority for this competition for FY 2002, we award, under section 34 CFR 75.105(c)(2)(i) and 34 CFR 75.255, an additional 5 points to an application from an otherwise eligible applicant that is a novice applicant. We award these points in addition to points that we award the applicant under the selection criteria. Thus, a novice applicant could earn a maximum of 110 points.

Note: A novice applicant is an applicant that, either individually or as a member of a consortium, has never received a grant under the Community Technology Centers program and has not received a discretionary grant from the Federal Government during the preceding five years (see 34 CFR 75.225(a)).

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and other program requirements. However, section 437(d)(1) of the General Education Provisions Act exempts from formal rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). The program authority for the Community Technology Centers program was substantially revised on January 8, 2002 by section 5511 of Pub. Law 107–110. In order to make awards on a timely basis, the Secretary has decided to issue this notice without first publishing proposed priorities and requirements for public comment. These priorities and requirements will apply to the FY 2002 grant competition only.

Selection Criteria: We use the following selection criteria to evaluate applications for grants under this competition.

The maximum score for all of these criteria is 105 points.

The maximum score for each criterion and factor is indicated in parentheses.

Note: In all instances where the word ''project'' appears in the selection criteria, the reference to a community technology center should be made.

(a) *Need for project. (20 points)*

(1) We consider the need for the proposed project.

(2) In determining the need for the proposed project, we consider the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (*10 points*)

(ii) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals. (*10 points*)

(b) *Significance. (10 points*)

(1) We consider the significance of the proposed project.

(2) In determining the significance of the proposed project, we consider the importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement. (*10 points*)

(c) *Quality of project design. (30 points)*

(1) We consider the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, we consider the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (*5 points*)

(ii) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population. (*5 points*)

(iii) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (*10 points*)

(iv) The likelihood that the services to be provided by the proposed project will lead to improvements in the skills necessary to gain employment or build capacity for independent living. (*10 points*)

(d) *Quality of project personnel. (10 points)*

(1) We consider the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, we consider the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (*5 points*)

(3) In addition, we consider the qualifications, including relevant training and experience, of key project personnel. (*5 points*)

(e) *Quality of the management plan. (10 points)*

(1) We consider the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, we consider the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (*10 points*)

(f) *Adequacy of resources. (10 points)*

(1) We consider the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, we consider the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization. (*5 points*)

(ii) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support. (*5 points*)

(g) *Quality of project evaluation. (15 points)*

(1) We consider the quality of the evaluation to be conducted by an independent evaluator of the proposed project.

(2) In determining the quality of the evaluation, we consider the following factors:

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. *(10 points)*

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. *(5 points)*

Note: In accordance with EDGAR 34 CFR 75.590, 80.40, and 80.50, grant recipients must submit a final performance report as a condition of the grant that provides the most current performance and financial expenditure information on project activities, including the recipient's progress in achieving the objectives in its approved application.

Intergovernmental Review of Federal Programs

This program is subject to Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and

review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive Order 12372. If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any SPOC, see the latest official SPOC list on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants/spoc.html*.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a SPOC and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this application notice to the following address: The Secretary, E.O. 12372–CFDA #84.341A, U.S. Department of Education, room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

We will determine proof of mailing under 34 CFR 75.102 (Deadline date for applications). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THIS ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH AN APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Application Instructions and Forms

The Appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, various assurances and certifications, and a checklist for applicants.

- Application for Federal Education Assistance (ED 424 (Exp. 11/30/2004)) and instructions and definitions.
- Protection of Human Subjects in Research (Attachment to ED 424).
- Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.
- Application Narrative.
- Assurances—Non-Construction Programs (Standard Form 424B) (Rev. 7–97).
- Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 12/98) and instructions.
- Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)
- Certification of Eligibility for Federal Assistance in Certain Programs (ED 80–0016 9/92)).
- Disclosure of Lobbying Activities (Standard Form LLL (Rev. 7–97)) and instructions.
- Checklist for Applicants.

You may submit information on a photocopy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. We will not award a grant unless we have received a completed application form.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in this application notice.

Electronic Access to this Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in text at the following site: *www.ed.gov/offices/OVAE/CTC*.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

FOR FURTHER INFORMATION CONTACT: Mary LeGwin or April Blunt, U.S. Department of Education, Community Technology Centers Program, Office of Vocational and Adult Education, 330 C Street, SW., room 4414, Switzer Building, Washington, DC 20202–7240. Telephone: (202) 205–4238 or via Internet: *ctc@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Pilot Project for Electronic Submission of Applications

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Community Technology Centers Program—CFDA 84.341A is one of the programs included in the pilot project. If you are an applicant under the Community Technology Centers Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.

2. Make sure that the institution's Authorizing Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an

identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of ED 424.

5. Fax ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Community Technology Centers Program at: *http://e-grants.ed.gov*.

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

Instructions for Transmitting Applications

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(A) *If You Send Your Application by Mail:* You must mail the original and two copies of the application on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional two copies of your application. We request that you bind one of these copies. Mail your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.341A, 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: Due to recent disruptions to normal mail delivery, the Department encourages you to consider using an alternative delivery method (for example, a commercial carrier, such as Federal Express or United Parcel Service; U. S. Postal Service Express Mail; or a courier service) to transmit your application for this competition. If you use an alternative delivery method, please obtain the appropriate proof of mailing under this section (A) ''If You Send Your Application by Mail,'' then follow the instructions in section (B) ''If You Deliver Your Application by Hand.''

(B) *If You Deliver Your Application by Hand:* You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional two copies of your application. We request that you bind one of these copies. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.341A), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(C) *If You Submit Your Application Electronically:* You must submit your grant application through the Internet using the software provided on the e-Grants Web site (http://e-grants.ed.gov) by 4:30 p.m. (Washington, DC time) on the deadline date.

The regular hours of operation of the e-Grants Web site are 6:00 a.m. until 12:00 midnight (Washington, DC time) Monday—Friday and 6:00 a.m. until 7:00 p.m. Saturdays. The system is unavailable on the second Saturday of every month, Sundays, and Federal holidays. Please note that on Wednesdays the Web site is closed for maintenance at 7:00 p.m. (Washington, DC time).

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(5) If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

Parity Guidelines Between Paper and Electronic Applications

In FY 2002, the U.S. Department of Education is continuing to expand the pilot project, which began in FY 2000, which allows applicants to use an Internet-based electronic system for submitting applications. This competition is among those that have an electronic submission option available to all applicants. The system, called e-APPLICATION, formerly e-GAPS (Electronic Grant Application System), allows an applicant to submit a grant application to us electronically, using a current version of the applicant's Internet browser. To see e-APPLICATION visit the following address: *http://e-grants.ed.gov.*

Users of e-APPLICATION, a data driven system, will be entering data on-line while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will go into a database and ultimately will be accessible in electronic form to our reviewers.

This pilot project continues the Department's transition to an electronic grant award process. In addition to e-APPLICATION, the Department plans to expand the number of discretionary programs using the electronic peer review (e-READER) system and to increase the participation of discretionary programs offering grantees the use of the electronic annual performance reporting (e-REPORTS) system.

To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere to the following guidelines:

• Submit your application on 8½″ by 11″ paper.

• Leave a 1-inch margin on all sides.

• Use consistent font throughout your document. You may also use boldface type, underlining, and italics. However, please do not use colored text.

• Please use black and white, also, for illustrations, including charts, tables, graphs and pictures.

• For the narrative component, your application should consist of the

number and text of each selection criterion followed by the narrative. The text of the selection criterion, if included, does not count against any page limitation.

• Place a page number at the bottom right of each page beginning with 1; and number your pages consecutively throughout your document.

Program Authority: 20 U.S.C. 7263.

Dated: May 30, 2002.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

Appendix—Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection of information is 1890–0009. Expiration date: 7/31/2002. We estimate the time required to complete this collection of information to average 40 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: Mary LeGwin or April Blunt, Community Technology Centers Program, U.S. Department of Education, Washington, DC 20202–4651. If you have comments or concerns regarding the status of your submission of this form, write directly to: Community Technology Centers Program, Division of Adult Education and Literacy, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4414, Mary E. Switzer Building, Washington, DC 20202–7240.

Instructions for the Application Narrative

The narrative is the section of the application where the selection criteria used by reviewers in evaluating the application are addressed. The narrative must encompass each function or activity for which funds are being requested. Before preparing the Application Narrative, an applicant should read carefully the description of the program, the required contents of the application, and the selection criteria we use to evaluate applications.

1. Begin with a one-page abstract summarizing the proposed community technology center project, including a short description of the population to be served by the project, project objectives, and planned project activities;

2. Include a table of contents listing the parts of the narrative in the order of first, the required elements of the application, and second, the selection criteria. Indicate the page numbers on which the different parts of the narrative are found. Be sure to number the pages.

3. Address the four required elements of the application.

4. Describe fully the proposed project in light of the selection criteria in the order in which the criteria are listed in the application package. Do not simply paraphrase the criteria.

5. In the application budget, include a description of the non-federal contributions that the applicant will contribute to the project in amounts not less than the non-federal contribution as required in this notice. Budget line items must support the goals and objectives of the proposed project.

6. Provide the following in response to the attached ''Notice to all Applicants'': (1) A reference to the portion of the application in which information appears as to how the applicant is addressing steps to promote equitable access and participation, or (2) a separate statement that contains that information.

7. When applying for funds as a consortium, individual eligible applicants must enter into an agreement signed by all members. The consortium's agreement must detail the activities each member of the consortium plans to perform, and must bind each member to every statement and assurance made in the consortium's application. The designated applicant must submit the consortium's agreement with its application.

8. Attach copies of all required assurances and forms.

Budget Information and Instructions

1. *Personnel:* Show salaries to be paid to personnel.

2. *Fringe Benefits:* Indicate the rate and amount of fringe benefits.

3. *Travel:* Indicate the amount requested for both local and out of State travel of Program Staff. Include funds for two people to attend the Program Director's Workshop in Washington, DC.

4. *Equipment:* Indicate the cost of non-expendable personal property that has a cost of $5,000 or more per unit.

5. *Supplies:* Include the cost of consumable supplies and materials to be used during the project period.

6. *Contractual:* Show the amount to be used for: (1) Procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts.

7. *Construction:* Not applicable.

8. *Other:* Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants and capital expenditures.

9. *Total Direct Cost:* Show the total for Lines 1 through 8.

10. *Limitation on Indirect Costs:* The success of the Community Technology Centers program will depend upon how well grantees improve the literacy and other skills of those they serve. If the program is to achieve its purposes, we need to ensure that the $15 million available for new grants is used as effectively as possible. To do so, it is necessary to place a reasonable limitation on the amount of program funds that grant recipients may use to reimburse themselves for the ''indirect costs'' of program activities. Therefore, the Secretary has decided to establish a reasonable limit of eight percent (8%) on the indirect cost rate that all program recipients may charge to funds provided under this program. Indicate the rate and amount of indirect costs for each budget year. Indirect cost reimbursement is limited to your actual indirect costs, as determined by your negotiated indirect cost rate agreement, or eight percent (8%) of your modified direct cost base, whichever is less. If you do not have a negotiated indirect cost rate agreement, we may assign you a temporary rate until a rate agreement has been negotiated.

11. *Training/Stipend Cost:* Not applicable.

12. *Total Costs:* Show total for lines 9 through 11.

Instructions for the Budget Narrative

The budget narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs. Please limit this section to no more than five pages. Be sure that each page of your application is numbered consecutively.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Assistance (ED 424).

2. Budget Information—Non-construction Programs (ED Form No. 524).

3. Budget Narrative.

4. Application Narrative, including application abstract, table of contents, the four required elements of the application, responses to the selection criteria, and information that addresses section 427 of the General Education

Provisions Act. (See the section entitled ''NOTICE TO ALL APPLICANTS'').

5. Assurances—Non-Construction Programs (SF 424B).

6. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

7. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014).

8. Disclosure of Lobbying Activities (Standard Form LLL).

9. Consortium agreement, if applicable.

Note: The section on PAGE LIMIT elsewhere in this application notice applies to your application. The 40 page limit applies to the four required elements of the application and your responses to the selection criteria.

BILLING CODE 4000–01–P

OMB Control No. 1890-0007 (Exp. 09/30/2004)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007.** The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3). Washington, DC 20202-4248.

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number ☐☐☐☐☐☐☐☐☐

3. Applicant's T-I-N ☐☐-☐☐☐☐☐☐☐

4. Catalog of Federal Domestic Assistance #: 8 4 3 4 1 A
Title: Community Technology Centers Program

5. Project Director: _____
Address: _____
City _____ State _____ ZIP Code + 4 _____
Tel. #: _____ Fax #: _____
E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No

7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

8. Type of Applicant (Enter appropriate letter in the box.) ☐

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:
—PreApplication ☐ Construction ☐ Non-Construction
—Application ☐ Construction ☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)

b. Title

c. Tel. #: _____ Fax #: _____

d. E-Mail Address:

e. Signature of Authorized Representative | Date: _____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

Has never received a grant or subgrant under the program from which it seeks funding;

Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and

Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION BUDGET INFORMATION NON-CONSTRUCTION PROGRAMS	OMB Control Number: 1890-0004 Expiration Date: 02/28/2003
Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check **[ ]** if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount,** *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):

11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

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Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizationallevel below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

[FR Doc. 02–13983 Filed 6–3–02; 8:45 am]

BILLING CODE 4000–01–C

Federal Register

Tuesday,
June 4, 2002

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for Capacity Building, Coordination, and Collaboration projects under the Disability and Rehabilitation Research Projects (DRRP) Program of the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2002 and later years. We take this action to focus research attention on an identified national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities from traditionally underserved racial and ethnic populations.

DATES: We must receive your comments on or before July 5, 2002.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov*.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. If we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational.

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act).

Section 21

Section 21(b)(2)(A) of the Act authorizes NIDRR to make awards to minority entities and Indian tribes to carry out activities authorized under title II of the Act. A minority entity is defined as a historically black college or university (a Part B institution, as defined in section 322(2) of the Higher Education Act of 1965, as amended), a Hispanic-serving institution of higher education, an American Indian tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent. Consistent with section 21(b)(2)(A), eligibility is limited to minority entities and Indian tribes.

New Freedom Initiative and The NIDRR Long-Range Plan

This priority reflects issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html*.

The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products*.

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Priority

Background

In establishing section 21 of the Act, Congress noted patterns of inequitable treatment of traditionally underserved racial and ethnic populations (also referred to as minorities) in all major junctures of the vocational rehabilitation (VR) process. However,

research findings have not yielded conclusive evidence about factors that contribute to the persistent pattern of inequitable treatment. Although recent research findings indicate that the experiences and rehabilitation outcomes for individuals from traditionally underserved racial and ethnic populations differ from nonminority individuals, the factors that influence rehabilitation outcomes is not clear. For example, evidence about the significance of race as a correlate of acceptance for VR services and contributor for differential rehabilitation outcomes are inconclusive.

NIDRR undertakes this priority to enhance our understanding of the unique needs of individuals with disabilities from traditionally underserved racial and ethnic populations and to support cooperative partnerships between minority and nonminority entities.

The priority invites capacity-building activities and development of strategies to improve the participation of consumers with disabilities from traditionally underserved racial and ethnic populations in research and decision-making activities in a variety of settings.

Proposed Priority

This proposed priority is intended to improve the quality and utility of research related to individuals with disabilities from traditionally underserved racial and ethnic populations and to enhance knowledge and awareness of issues related to these populations. The proposed priority would achieve this goal by (1) building the capacity of researchers, especially individuals from traditionally underserved racial and ethnic populations, and (2) conducting disability research that examines the unique needs and factors that influence rehabilitation outcomes for individuals with disabilities from traditionally underserved racial and ethnic populations.

Applicants must choose a minimum of three and up to a maximum of five research areas below. Due to the need to focus research and capacity-building activities on specific groups or topics, applicants may target those populations appropriate to the activities that they propose.

The DRRP research and capacity-building areas are:

(1) To investigate and evaluate disability and rehabilitation outcomes for individuals with disabilities from traditionally underserved racial and ethnic populations in State VR systems, and assess between State and within State differences in outcomes.

(2) To investigate and evaluate access to and acceptance rates for VR services, types of services provided, and costs of rehabilitation services for individuals with disabilities from traditionally underserved racial and ethnic populations compared to nonminority individuals.

(3) To investigate, evaluate, and develop, as needed, indices and measures to assess the capacity of the disability and VR personnel workforce to provide quality services to individuals with disabilities from traditionally underserved racial and ethnic populations.

(4) To investigate, evaluate, and report activities that strengthen disability-related research collaboration between minority entities and nonminority entities, particularly collaboration to improve rehabilitation services and outcomes for traditionally underserved racial and ethnic populations.

(5) To investigate, develop as needed, and evaluate strategies for strengthening resources and research capacity of minority entities, particularly the expertise and infrastructure requirements that are needed to ensure the optimal participation of minority entities in disability and rehabilitation research.

(6) To investigate, develop, and evaluate strategies, such as cultural competency training, targeted recruitment efforts, and incentives, to include and enhance retention of students and investigators from traditionally underserved racial and ethnic populations as rehabilitation researchers, administrators, and educators.

(7) To investigate and evaluate the effect of persons from traditionally underserved racial and ethnic populations participating in disability and rehabilitation research activities, direct service delivery, and training programs, and determine to what extent participation assists to improve VR outcomes for these underserved populations.

The DRRP project will provide information leading to better understanding of: (1) Factors that contribute to different VR outcomes for traditionally underserved racial and ethnic populations compared to nonminorities, (2) training needs and effective training strategies, (3) effective approaches for improving collaboration between minority entities and Indian tribes and other institutions, and (4) strategies that strengthen the research infrastructure and capacity-building for minority entities and Indian tribes.

In carrying out the purposes of the priority, the DRRP must:

- Through consultation with the NIDRR project officer, coordinate and establish partnerships, as appropriate, with other academic institutions and organizations that are relevant to the project's proposed activities, including minority entities and Indian tribes;
- Demonstrate use of culturally appropriate data collection, evaluation, dissemination, training, and research methodologies and significant knowledge of the needs of individuals with disabilities from traditionally underserved populations;
- Develop, implement, and evaluate dissemination strategies for research and capacity-building products developed by the project;
- Demonstrate appropriate multidisciplinary linkages;
- Develop and regularly update an online information dissemination system and make material readily available in alternate formats;
- Conduct an annual evaluation of all activities undertaken in support of capacity-building using formal measures and indicators;
- Provide expertise, consultation, and technical assistance on capacity-building and cultural competence to individuals and organizations seeking information; and
- Ensure an interdisciplinary outreach effort in conducting research and capacity-building activities.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

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(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project.)

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: May 10, 2002.

Andrew J. Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–13985 Filed 6–3–02; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 1840/P.L. 107–185

To extend eligibility for refugee status of unmarried sons and daughters of certain Vietnamese refugees. (May 30, 2002; 116 Stat. 587)

H.R. 4782/P.L. 107–186

To extend the authority of the Export-Import Bank until June 14, 2002. (May 30, 2002; 116 Stat. 589)

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