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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AJ36

Suspension of CHAMPVA or TRICARE or TRICARE-for-Life Eligibles' Enrollment in the Federal Employees Health Benefits (FEHB) Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to allow CHAMPVA or TRICARE or TRICARE-for-Life eligible FEHB Program annuitants, survivors, and former spouses to suspend their FEHB enrollments, and then return to the FEHB Program during the Open Season, or return to FEHB coverage immediately, if they involuntarily lose CHAMPVA or TRICARE or TRICARE-for-Life coverage. The intent of this rule is to allow these beneficiaries to avoid the expense of continuing to pay FEHB Program premiums while they are using TRICARE or TRICARE-for-Life or CHAMPVA coverage, without endangering their ability to return to the FEHB Program in the future.

EFFECTIVE DATE: Effective July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, Policy Analyst, Insurance Policy and Information Division, OPM, Room 3425, 1900 E Street, NW., Washington, DC 20415–0001. Phone: (202) 606–0004.

SUPPLEMENTARY INFORMATION: Effective October 1, 2001, the National Defense Authorization Act for 2001 reinstated TRICARE coverage for Medicare-eligible uniformed services retirees, their survivors and eligible dependents under the new TRICARE-for-Life program. TRICARE or TRICARE-for-Life coverage can be advantageous to many uniformed services beneficiaries who now are covered under the FEHB Program as Federal civilian annuitants, survivors, or former spouses.

Also, recent legislation, Public Law 107–14, provides beneficiaries over age 65 of the Department of Veterans Affairs (VA) with coverage secondary to Medicare under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA). CHAMPVA provides similarly attractive benefits to VA eligible beneficiaries as those benefits provided to uniformed services beneficiaries under the TRICARE or new TRICARE-for-Life programs.

Under previous FEHB regulations, however, an annuitant, survivor, or former spouse who canceled his or her FEHB coverage to use CHAMPVA or TRICARE would not be allowed to return to FEHB coverage. Therefore, OPM is issuing these final regulations to allow these FEHB participants to suspend, rather than cancel, their FEHB coverage to use CHAMPVA or TRICARE or the new TRICARE-for-Life coverage. Under this rule, eligible individuals are allowed to return to FEHB coverage immediately if they involuntarily lose CHAMPVA or TRICARE or TRICARE-for-Life coverage or during a future FEHB Open Season.

We are also amending our regulations to clarify a similar situation involving FEHB-covered annuitants, survivors, and former spouses. The regulations allow an individual who drops FEHB coverage when he or she enrolls in a Medicare-sponsored plan, or in Medicaid or a similar State-sponsored program of medical assistance for the needy, to return to FEHB coverage during the annual Open Season or immediately upon being involuntarily disenrolled from the non-FEHB coverage.

On September 26, 2001, OPM published an interim regulation in the **Federal Register** (66 FR 49086). OPM received comments from a number of individuals as well as the Department of Veterans Affairs on the regulation. Three commenters were not sure if the regulation allowed surviving spouses of Federal annuitants to suspend their FEHB coverage to use TRICARE or TRICARE-for-Life. One commenter also wanted to know if a surviving spouse could reenroll in the FEHB Program if the annuitant passed away during the suspension period. The regulation authorizes a surviving spouse, who is eligible for health benefits coverage as a survivor annuitant, to suspend FEHB coverage while maintaining the right to reenroll in the future. In order to qualify for health benefit coverage as a survivor annuitant, a surviving spouse must have been enrolled as a family member under the annuitant's Self and Family enrollment and qualify to receive a portion of the annuitant's annuity upon his/her death. The regulation also allows individuals who become survivor annuitants during a period of suspended FEHB coverage to reenroll even though the survivor didn't make the original decision to suspend coverage. The survivor must have been enrolled under the annuitant's Self and Family coverage immediately preceding the annuitant's suspension of FEHB coverage and otherwise qualify as a survivor annuitant.

We received a comment from the VA stating that CHAMPVA provides the same or similar benefits to VA eligible beneficiaries as those benefits provided to TRICARE beneficiaries. Because of this, the VA believes that individuals eligible for CHAMPVA should be permitted to suspend FEHB coverage under the same conditions as those individuals eligible for TRICARE or TRICARE-for-Life. We agree with the VA and have revised the regulation to allow annuitants, survivors, and former spouses to suspend FEHB coverage with the right to reenroll in the future.

One commenter requested that we make the regulation retroactive to the effective date of the TRICARE-for-Life legislation. The commenter stated that many eligible individuals canceled rather than suspended their FEHB enrollments because that was the only option available at the time. The actual date that the new TRICARE-for-Life program became effective for medical, hospital, and surgical coverage was October 1, 2001. Our interim regulation was published and effective on September 26, 2001. Therefore, the authority to suspend, rather than cancel, was available to annuitants and former spouses on the effective date of TRICARE-for-Life coverage. We see no need to make further changes to the regulation's effective date.

One commenter requested that OPM give spouses of living civilian annuitants the opportunity to enroll in

Self-Only coverage under the FEHB Program while allowing annuitants the opportunity to suspend FEHB coverage for TRICARE or TRICARE-for-Life. Another commenter requested that OPM give spouses of living annuitants the opportunity to suspend their FEHB enrollment with the right to reenroll in the FEHB Program in the future. Existing FEHB law does not authorize spouses of living employees or annuitants to enroll in the FEHB Program on their own behalf. Therefore, we cannot create this authority through regulation.

One commenter asked if active civil service employees could suspend their FEHB coverage to use TRICARE or TRICARE-for-Life. The regulation does not allow employees to suspend their coverage. This is because employees have always had the option of canceling their coverage with the right to reenroll in the FEHB Program during a future Open Season, or immediately if they involuntarily lose TRICARE coverage. In the past, annuitants, survivors, and former spouses never had the option to reenroll in the FEHB Program after leaving for TRICARE. Our new regulation creates this authority.

We have clarified the period for submitting suspension documentation to OPM and the effective date of suspensions. In the case of an involuntary disenrollment from non-FEHB coverage, if an eligible individual does not request to reenroll in the FEHB Program within the time period specified by the regulation, he or she must wait until the next Open Season to reenroll.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects health insurance carriers under the Federal Employees Health Benefits Program.

Executive Order 12866, Regulatory Review

This regulation has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Iraq, Kuwait, Lebanon, Reporting and record keeping requirements, Retirement.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

For the reasons set forth in the preamble, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

2. The section heading in § 890.304 and paragraph (d)(2) are revised to read as follows:

§ 890.304 When do enrollments terminate, cancel or suspend?

* * * * *

(d) * * *

(2) An annuitant or survivor annuitant may suspend enrollment in FEHB for the purpose of enrolling in a Medicare-sponsored plan under sections 1833, 1876, or 1851 of the Social Security Act, or to enroll in the Medicaid program or a similar State-sponsored program of medical assistance for the needy, or to use CHAMPVA or TRICARE (including coverage provided by the Uniformed Services Family Health Plan) or TRICARE-for-Life instead of FEHB coverage. To suspend FEHB coverage, documentation of eligibility for coverage under the non-FEHB program must be submitted to the retirement system. If the documentation is received within the period beginning 31 days before and ending 31 days after the effective date of the enrollment in the Medicare-sponsored plan, or the Medicaid or similar program, or within 31 days before or after the day designated by the annuitant or survivor annuitant as the day he or she wants to suspend FEHB coverage to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life instead of FEHB coverage, then suspension will be effective at the end of the day before the effective date of the enrollment or the end of the day before the day designated. Otherwise, the suspension is effective the first day of the first pay period that begins after the date the retirement system receives the documentation.

* * * * *

3. The section heading in § 890.306 and paragraph (f)(1)(ii) are revised, paragraphs (f)(1)(iii) and (f)(1)(iv) are removed, paragraph (h) is revised, and paragraph (i) is removed and reserved to read as follows:

§ 890.306 When can annuitants or survivor annuitants change enrollment or reenroll and what are the effective dates?

* * * * *

(f) * * *

(1) * * *

(ii) An annuitant or survivor annuitant who suspended enrollment under this part to enroll in a Medicare-sponsored plan under sections 1833, 1876, or 1851 of the Social Security Act, or to enroll in a Medicaid or similar State-sponsored program of medical assistance for the needy, or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life coverage instead of FEHB coverage, may reenroll.

* * * * *

(h) *Reenrollment of annuitants or survivor annuitants who suspended enrollment to enroll in a Medicare-sponsored plan, or a Medicaid or similar State-sponsored program; or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life coverage instead of FEHB coverage.*

(1) An annuitant or survivor annuitant who had been enrolled (or was eligible to enroll) for coverage under this part and suspended the enrollment for the purpose of enrolling in a Medicare sponsored plan under sections 1833, 1876, or 1851 of the Social Security Act, or to enroll in the Medicaid program or a similar State-sponsored program of medical assistance for the needy, or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life coverage instead of the FEHB Program (as provided by § 890.304(d)), and who subsequently involuntarily loses coverage under one of these programs, may immediately reenroll in any available FEHB plan under this part at any time beginning 31 days before and ending 60 days after the loss of coverage. A reenrollment under this paragraph (h) of this section takes effect on the date following the effective date of the loss of coverage as shown on the documentation from the non-FEHB coverage. If the request to reenroll is not received by the retirement system within the time period specified, the annuitant must wait until the next available Open Season to reenroll.

(2) An annuitant or survivor annuitant who suspended enrollment in the FEHB Program to enroll in a Medicare sponsored plan or the Medicaid or similar State-sponsored program of

medical assistance for the needy, or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life, but now wants to reenroll in the FEHB Program for any reason other than an involuntary loss of coverage, may do so during the next available Open Season (as provided by paragraph (f) of this section).

(i) [Reserved]

* * * * *

4. The section heading in § 890.806 and paragraphs (f)(1)(ii) are revised, paragraphs (f)(1)(iii) and (f)(1)(iv) are removed, paragraph (h) is revised, and paragraph (i) is removed and reserved to read as follows:

§ 890.806 When can former spouses change enrollment or reenroll and what are the effective dates?

* * * * *

(f) * * *

(1) * * *

(ii) A former spouse who suspended the enrollment under this part for the purpose of enrolling in a Medicare sponsored plan under sections 1833, 1876, or 1851 of the Social Security Act, or to enroll in the Medicaid program or a similar State-sponsored program of medical assistance for the needy, or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life coverage instead of FEHB coverage, may reenroll.

* * * * *

(h) *Reenrollment of former spouses who suspended enrollment to enroll in a Medicare sponsored plan, or the Medicaid or similar State-sponsored program, or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life coverage instead of FEHB coverage.*

(1) A former spouse who had been enrolled for coverage under this part and suspended enrollment for the purpose of enrolling in a Medicare sponsored plan under sections 1833, 1876, or 1851 of the Social Security Act, or to enroll in Medicaid or similar State-sponsored program of medical assistance for the needy, or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life coverage instead of FEHB (as provided in § 890.807(e)), or who meets the eligibility requirements of § 890.803 and the application time limitation requirements of § 890.805, but postponed enrollment in the FEHB Program for the purpose of enrolling in one of these non-FEHB programs, and who subsequently involuntarily loses coverage under one of these programs, may immediately reenroll in any available FEHB plan under this part at any time beginning 31 days before and ending 60 days after the loss of coverage. A reenrollment under this paragraph (h) of this section takes effect on the date following the effective date of the loss of coverage as shown on the documentation from the non-FEHB coverage. If the request to reenroll is not received by the employing office or retirement system within the time period specified, the former spouse must wait until the next available Open Season to reenroll.

(2) A former spouse who suspended enrollment in the FEHB Program to enroll in a Medicare sponsored plan, or the Medicaid program or a similar State-sponsored program of medical assistance for the needy, or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or the TRICARE-for-Life program, but now wants to reenroll in the FEHB Program for any reason other than an involuntary loss of coverage, may do so during the next available Open Season (as provided by paragraph (f) of this section).

(i) [Reserved]

* * * * *

5. The section heading in § 890.807 and paragraphs (e)(2) and (e)(4) are revised to read as follows:

§ 890.807 When do enrollments terminate, cancel or suspend?

* * * * *

(e) * * *

(2) A former spouse may suspend enrollment in FEHB for the purpose of enrolling in a Medicare sponsored plan under sections 1833, 1876, or 1851 of the Social Security Act, or to enroll in the Medicaid program or a similar State-sponsored program of medical assistance for the needy, or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life coverage instead of FEHB coverage. To suspend FEHB coverage, documentation of eligibility for coverage under the non-FEHB Program must be submitted to the employing office or retirement system. If the documentation is received within the period beginning 31 days before and ending 31 days after the effective date of the enrollment in the Medicare sponsored plan, or the Medicaid or similar program, or within 31 days before or after the day designated by the former spouse as the day he or she wants to suspend FEHB coverage to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life coverage instead of FEHB coverage, then the suspension will be effective at the end of the day before the effective date of the enrollment or the end of the day before the day designated. Otherwise, the suspension is effective the first day of the first pay period that begins after the date the employing office or retirement system receives the documentation.

* * * * *

(4) A former spouse who cancels his or her enrollment for any reason may not later reenroll in the FEHB Program.

[FR Doc. 02–15275 Filed 6–17–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–017–1]

Pine Shoot Beetle; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations by adding 11 counties in Illinois, Indiana, Maine, Michigan, Ohio, and Wisconsin to the list of quarantined areas. This action is necessary to prevent the spread of pine shoot beetle, a pest of pine products, into noninfested areas of the United States.

DATES: This interim rule is effective June 18, 2002. We will consider all comments that we receive on or before August 19, 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. 02–017–1, 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. 02–017–1. 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. 02–017–1'' on the subject line.

You may read any comments that we receive on this docket 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: Mr. Jonathan Jones, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 through 301.50–10 (referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle (PSB) into noninfested areas of the United States.

PSB is a pest of pine trees that can cause damage in weak and dying trees, where reproduction and immature stages of PSB occur. During ''maturation feeding,'' young beetles tunnel into the center of pine shoots (usually of the current year's growth), causing stunted and distorted growth in host trees. PSB is also a vector of several diseases of pine trees. Factors that may result in the establishment of PSB populations far from the location of the original host tree include: (1) Adults can fly at least 1 kilometer, and (2) infested trees and pine products are often transported long distances. This pest damages urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

PSB hosts include all pine species. The beetle has been found in a variety of pine species (Pinus spp.) in the United States. Scotch pine (*P. sylvestris*) is the preferred host of PSB. The Animal and Plant Health Inspection Service (APHIS) has determined, based on scientific data from European countries, that fir (*Abies* spp.), larch (*Larix* spp.), and spruce (*Picea* spp.) are not hosts of PSB.

Surveys conducted by State and Federal inspectors revealed 11 additional areas infested with PSB in 6 States (Illinois, Indiana, Maine, Michigan, Ohio, and Wisconsin). Copies of the surveys may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

The regulations in Sec. 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which PSB has been found by an inspector, in which the Administrator has reason to believe PSB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which PSB has been found.

In accordance with these criteria, we are designating Marshall and Tazewell Counties, IL; Brown, Fayette, Hendricks, and Owen Counties, IN; Franklin County, ME; Dickinson County, MI; Franklin and Monroe Counties, OH; and Kenosha County, WI, as quarantined areas, and we are adding them to the list of quarantined areas provided in § 301.50–3(c).

Entities affected by this interim rule may include nursery stock growers, Christmas tree farms, logging operations, and others who sell, process, or move regulated articles. As a result of this interim rule, any regulated articles to be moved interstate from a quarantined area must first be inspected and/or treated in order to qualify for a certificate or limited permit authorizing the movement.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent PSB from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Section 301.50–3 is amended as follows:

a. In paragraph (c), under Illinois, by adding new counties in alphabetical order.

b. In paragraph (c), under Indiana, by adding new counties in alphabetical order.

c. In paragraph (c), under Maine, by adding a new county in alphabetical order.

d. In paragraph (c), under Michigan, by adding a new county in alphabetical order.

e. In paragraph (c), under Ohio, by adding new counties in alphabetical order.

f. In paragraph (c), under Wisconsin, by adding a new county in alphabetical order.

g. In paragraph (d), by revising the map.

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

ILLINOIS

* * * * *

Marshall County. The entire county.

* * * * *

Tazewell County. The entire county.

* * * * *

INDIANA

* * * * *

Brown County. The entire county.

* * * * *

Fayette County. The entire county.

* * * * *

Hendricks County. The entire county.

* * * * *

Owen County. The entire county.

* * * * *

MAINE

Franklin County. The entire county.

* * * * *

MICHIGAN

* * * * *

Dickinson County. The entire county.

* * * * *

OHIO

* * * * *

Franklin County. The entire county.

* * * * *

Monroe County. The entire county.

* * * * *

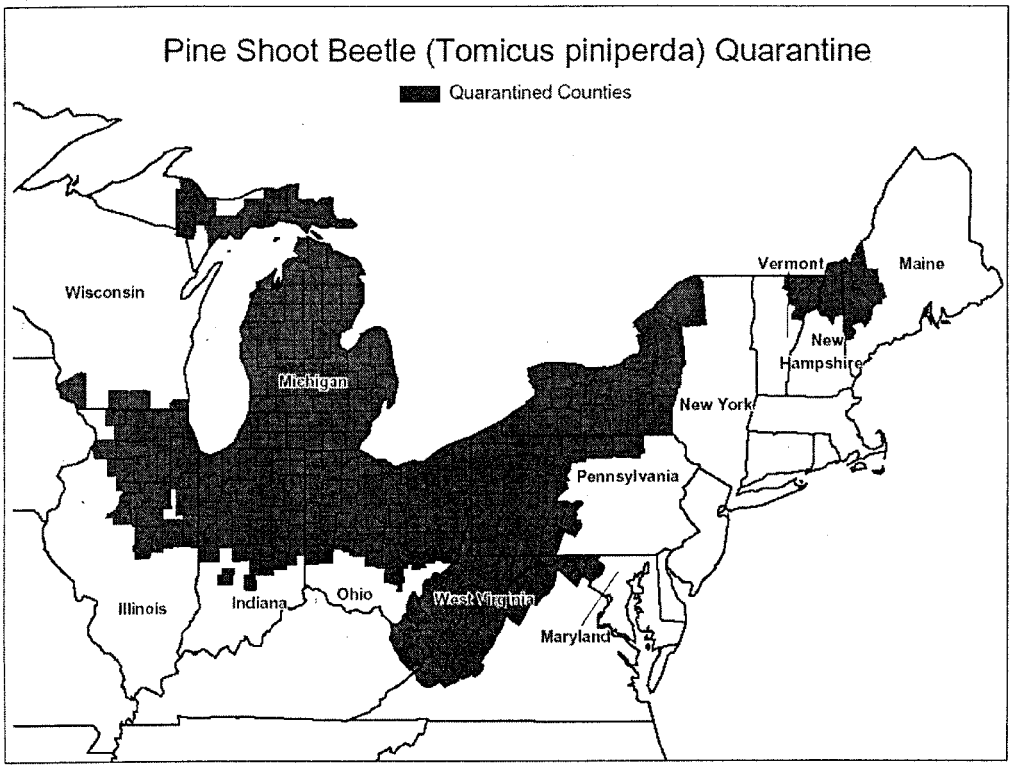
WISCONSIN

* * * * *

Kenosha County. The entire county.

* * * * *

(d) * * *



Done in Washington, DC, this 13th day of June 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–15336 Filed 6–17–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

RIN 0560–AG68

Sale and Purchase of Flue-Cured Tobacco Across County Lines (Florida and Georgia)

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule amends regulations that govern tobacco quotas and allotments to allow the transfer by sale of a flue-cured quota in either Georgia or Florida to another farm, for production on that farm, in another county in that State. The Farm Service Agency (the Agency) held a referendum of producers to determine their opinion on the sale of allotments across county lines. Flue-cured producers in Georgia and Florida voted to permit transfers across county lines and this rule implements those results.

DATES: Effective June 18, 2002.

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Agricultural Program Specialist, Tobacco Branch, FSA, USDA, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0540: Telephone—(202) 720–2715; electronic mail: *ann_wortham@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. It was not determined to be significant or economically significant by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the United States Department of Agriculture (USDA) is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking on the substance of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

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

Unfunded Mandates

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

Federal Assistance Program

The title and number of the Federal assistance program, as found in the Catalogue of Federal Domestic Assistance, to which this rule applies is as follows:

10.051—Commodity Loans and Loan Deficiency Payments.

Paperwork Reduction Act

This rule does not impact the information collection requirements of 7 CFR part 723 approved by OMB and assigned OMB control number 0560–0058.

Discussion of Final Rule

This Final Rule will amend 7 CFR part 723 by implementing requirements of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000, Pub. L. 106–78 (the Act), that allow transfer by sale of flue-cured tobacco allotment or quota across county lines if a majority of eligible producers so vote in a referendum.

Current regulations limit the Agency to approving only requests for sale of flue-cured tobacco from one farm to another farm located within the same county. The Act, however, permitted a transfer across county lines if a sufficient number of voting producers who own or grow the tobacco wanted it. The Act directed the Secretary to conduct a referendum within any State in which at least 25 percent of the active flue-cured producers in that State petitioned the Secretary to do so. Thus, the producers themselves would determine if the regulations would permit the sale of flue-cured tobacco across county lines.

More than the required 25 percent of active flue-cured tobacco producers in both Florida and Georgia requested a referendum. The Agency conducted the referenda in October 2001 and a majority of the eligible voters who voted in the referenda approved permitting the sale of flue-cured tobacco quota across county lines.

This rule is not published for notice and comment because it implements statutory and regulatory provisions which are binding on the Agency. Since the Agency does not have discretion in this matter, public comment would not be able to affect the provisions of the rule. Therefore the rule is published as final and effective upon publication.

List of Subjects in 7 CFR Part 723

Allotment, Quota, Transfer.

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1, and 1445–2.

2. Section 723.216 is amended by revising paragraph (f)(1) to read as follows:

§ 723.216 Transfer of tobacco acreage allotment or marketing quota by sale, lease, or owner.

* * * * *

(f) * * *

(1) *Location of buying and selling farms.* Marketing quota transferred by sale must be to a farm administratively located within the same county. However, beginning with the 2002 and subsequent crops, flue-cured tobacco owners in the States of Florida and Georgia shall be permitted to sell flue-cured tobacco marketing quota to any other farm in their respective State if all other conditions for such a sale are met.

* * * * *

Signed at Washington, DC, on May 22, 2002.

James R. Little,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–15248 Filed 6–17–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 761

RIN 0560–AG64

Limitations on the Amount of Farm Service Agency Guaranteed Loans

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Farm Service Agency's (FSA) regulations by providing that the specific dollar amount of guaranteed loan limits will be increased annually based on an annual index of prices paid by farmers.

DATES: Effective on July 18, 2002.

FOR FURTHER INFORMATION CONTACT: For additional information contact Kathy Zeidler, Senior Loan Officer, USDA, FSA, Farm Loan Programs Loan Making Division, STOP 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522; telephone (202) 720–5199; e-mail: *kathy_zeidler@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

The Farm Service Agency (FSA) certifies that this rule will not have a significant economic effect on a substantial number of small entities and, therefore, is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, as amended (5 U.S.C. 601). This rule does not impact the small entities to a greater extent than the large entities.

Environmental Impact Statement

It is the determination of FSA that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, and 7 CFR part 1940, subpart G, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before requesting judicial review.

Executive Order 12372

The notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) found the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the National Government and the States, or on the distribution of power and responsibilities among various levels of government.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. The rule contains no Federal mandates, as defined by title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to sections 202 and 205 of UMRA.

Paperwork Reduction Act

This rule does not contain reporting or record keeping requirements subject to the Paperwork Reduction Act of 1995.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.406—Farm Operating Loans
10.407—Farm Ownership Loans

Discussion of the Final Rule

Section 806 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (the 1999 Act) [Pub. L. 105–277] amended the maximum guaranteed loan limits for farm ownership (FO) and farm operating (OL) loans in §§ 305 and 313, respectively, of the Consolidated Farm and Rural Development Act (CONACT) [7 U.S.C. 1925 and 1943, respectively]. The 1999 Act and this rule do not impact the maximum amounts of any other FSA farm loan programs; only guaranteed OL and FO loans are affected.

Prior to the 1999 Act, FSA guaranteed FO loans were limited to a maximum of $300,000 and guaranteed OLs were limited to $400,000. The 1999 Act increased these limits to a maximum of $700,000 per borrower for either guaranteed FO, guaranteed OL or a combination thereof, and requires an annual increase of the $700,000 maximum so that the loan limit keeps pace with inflation in the cost of farm inputs. The 1999 Act also defines the inflation adjustment as the percentage (if any) by which the average of the Prices Paid by Farmers Index (as compiled by the National Agricultural Statistics Service of the Department of Agriculture) for the 12-month period ending on August 31 of the immediately preceding fiscal year exceeds the average of this index for the 12-month period ending on August 31, 1996.

FSA published a final rule on February 12, 1999 (64 FR 7357–7403), revising the maximum guaranteed loan amounts in 7 CFR 762.122 in accordance with the 1999 Act. In accordance with the calculation prescribed in the 1999 Act, the maximum guaranteed loan amount increased to $717,000 effective October 1, 1999, then to $731,000 effective October 1, 2000, and most recently, to $759,000 effective October 1, 2001. These statutorily mandated increases were implemented internally with or without updating the regulation. Another increase is expected for October 1, 2002.

On January 24, 2001, FSA published a final rule (66 FR 7565–7568) that moved the regulations governing FSA guaranteed farm loan maximum dollar amounts from 7 CFR 762.122 to 7 CFR 761.8, and included the maximum amounts effective at that time. This rule will add language stating that the loan limits originally in effect for FY 2000 will be increased each year based on the percentage change in the Index and that the current maximum loan amount and the effective date of the limits will be available at all USDA Service Centers and on the FSA website at *http://www.fsa.usda.gov.* This change is made to maintain the accuracy of the regulations and provide the public with current loan limitations.

In accordance with 5 U.S.C. 553, the Agency has determined that a notice requesting public comment or a proposed rule is unnecessary for the amendments made in this rule because they are informational enhancements in the regulatory language, rather than substantive revisions to program requirements. Any public notification

requirements of 5 U.S.C. 553 will be met by making the maximum loan amounts available at any USDA Service Center nationwide and by listing them on the FSA website at *http://www.fsa.usda.gov.*

List of Subjects in 7 CFR Part 761

Credit, Agriculture, Loan programs—Agriculture.

Accordingly, 7 CFR part 761 is amended as follows:

PART 761—GENERAL AND ADMINISTRATIVE

1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

2. Amend § 761.8 by revising paragraphs (a) and (b) to read as follows:

§ 761.8 Loan limitations.

(a) *Dollar limits.* The outstanding principal balances for a farm loan applicant or anyone who will sign the promissory note cannot exceed any of the following:

(1) Farm Ownership loans, Beginning Farmer Down payment loans and Soil and Water loans:

(i) Direct—$200,000;

(ii) Guaranteed—$700,000 (for fiscal year 2000 and increased at the beginning of each fiscal year in accordance with paragraph (b) of this section);

(iii) Any combination of a direct Soil and Water loan, direct Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Farm Ownership loan—$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(2) Operating loans:

(i) Direct—$200,000;

(ii) Guaranteed—$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(iii) Any combination of a direct Operating loan and guaranteed Operating loan—$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(3) Any combination of guaranteed Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Operating loan—$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(4) Any combination of direct Farm Ownership loan, direct Soil and Water loan, direct Operating loan, guaranteed Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Operating loan—the amount in paragraph (a)(1)(ii) of this section plus $200,000;

(5) Emergency loans—$500,000;

(6) Any combination of direct Farm Ownership loan, direct Soil and Water loan, direct Operating loan, guaranteed Farm Ownership loan, guaranteed Soil and Water loan, guaranteed Operating loan, and Emergency loan—the amount in paragraph (a)(1)(ii) of this section plus $700,000.

(b) The dollar limits of guaranteed loans will be increased each fiscal year based on the percentage change in the Prices Paid by Farmers Index as compiled by the National Agricultural Statistics Service, USDA. The maximum loan limits for the current fiscal year are available in any FSA office and on the FSA website at http://www.fsa.usda.gov.

* * * * *

Signed at Washington, DC, on March 18, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–15249 Filed 6–17–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–75–AD; Amendment 39–12776; AD 2002–12–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200CB, and –200PF; and 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757–200, –200CB, and –200PF; and 767–200, –300, and –300F series airplanes; that requires modification of the right main landing gear and auto-speedbrake control system to provide an air/ground signal to the system. This action is necessary to prevent uncommanded deployment of the auto-speedbrake spoilers during flight, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 23, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2983; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757–200, –200CB, and –200PF; and 767–200, –300, and –300F series airplanes; was published in the **Federal Register** on November 27, 2001 (66 FR 59185). That action proposed to require modification of the right main landing gear and auto-speedbrake control system to provide an air/ground signal to the system.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Supportive Comment

One commenter agrees with the proposed rule.

Revised Service Information

One commenter (the airplane manufacturer) states that Boeing representatives have reviewed Boeing Alert Service Bulletin 757–27A0130, Revision 1, dated October 11, 2001, and recommend that it be added to the final rule as another source of service information for doing certain actions for Model 757 series airplanes. The proposed rule cited Boeing Alert Service Bulletin 757–27A0130, dated August 31, 2000, as the proper source of service information for doing the specified actions.

The FAA agrees with the commenter. We have reviewed and approved Boeing Alert Service Bulletin 757–27A0130, Revision 1, as an additional source of service information for doing certain

modifications specified in this final rule. We find that the changes incorporated in Revision 1 of the service bulletin are not substantive, meaning that airplanes modified per the original issue of the service bulletin are not subject to any additional work under Revision 1 of the service bulletin. Although the functional test has been changed somewhat, if the test was done per the original issue of the service bulletin it need not be done again unless an Engine Indication and Crew Alerting System message is displayed on the pitot heat system. We have revised paragraph (a) of this final rule to refer to Revision 1 of the service bulletin as the appropriate source of service information for the actions in that paragraph applicable to Model 757 series airplanes. In addition, we have added a new Note 2 (and reordered subsequent notes accordingly) to give credit for modifications done before the effective date of this AD according to the original issue of the service bulletin.

Extend Compliance Time

One commenter asks that the compliance time of 36 months, as specified in paragraph (a) of the proposed rule, be extended. The commenter states that it supports the manufacturer's recommendation of ''the earliest maintenance opportunity when manpower, materials, and facilities are available.'' The commenter notes that incorporating a 36-month compliance time for the modifications into the current schedule for 101 Boeing Model 757 series airplanes will negatively impact the flying public, as it will reduce operating capacity by an estimated 30 airplanes. The commenter also estimates the cost of this project at $5,246,850 and recommends that a 54-month compliance time will allow affected airplanes to continue operation without compromising safety.

A second commenter asks that the compliance time specified in the proposed rule be extended to 5 years. The commenter states that this would meet the operator's heavy check schedule and avoid special visits or extended downtime of airplanes. The commenter adds that safety of flight will not be compromised because this issue has existed since 1985 (total of 827,918 flight cycles) without an incident.

A third commenter asks that the compliance time specified in the proposed rule be extended to 48 months. The commenter states that a very limited supply of certain kits needed to accomplish the required tasks is available. The commenter adds that in many cases there is a lead time of up to three weeks for reordering the kits. The commenter notes that, due to the number of airplanes affected, the effective date of the proposed rule should be determined after Boeing produces an adequate number of the kits.

We partially agree with the commenters. We find that an increase in the compliance time will not adversely affect safety, and will allow the required modifications to be completed during a regularly scheduled maintenance visit, and allow time for procurement of the required kits. We have revised paragraph (a) of this final rule to require accomplishment of the modifications within 60 months after the effective date of the AD. However, we do not agree that the effective date of the AD should be determined after production of the kits. The manufacturer has assured us that production of the kits will meet the compliance time specified in this final rule.

Include Revision 2 of Service Information

One commenter asks that Revision 2 of the referenced service bulletin be added to the proposed rule for doing the specified actions, although the original issue was cited in the proposed rule as the proper source of service information for doing those actions. The commenter states that several operators have requested additional changes to Revision 1 of the service bulletin (specified above) to clarify certain procedures in the accomplishment instructions and effectivity installations of components.

We do not agree with the commenter. Although we have confirmed with the manufacturer that Revision 1 of the service bulletin is being revised, that revision (Revision 2) is not yet completed. However, when that revision has been reviewed and approved by us, we would consider this option under the provisions for requesting approval of an alternative method of compliance in paragraph (b) of this final rule. No change is made to the final rule in this regard.

Change Certain Wording

One commenter asks that a statement be added to the proposed rule or the referenced service information to state, ''where inner and outer ferrules are called out in the service bulletin, an equivalent solder sleeve part number is acceptable.'' The commenter adds that solder sleeves meet environmental and system temperature requirements.

We do not agree with the commenter. The manufacturer has informed us that the use of solder sleeves is not recommended due to fire safety concerns in the work area. No change is made to the final rule in this regard.

Proposed Actions Unnecessary for Model 757 Series Airplanes

One commenter states that the actions specified in the proposed rule are not necessary for Model 757 series airplanes. The commenter notes that uncommanded deployment of the auto-speedbrake spoiler during flight was a repeated condition for a Model 767 series airplane, and was reported by one operator at a single geographical location. The commenter adds that the digital flight data recorder showed that the air/ground systems momentarily went into ground mode and the crew was able to recover control of the airplane. The commenter also adds that the manufacturer stated that the proximity switch electronic unit (PSEU) did not provide the critical auto-speedbrake system with the level of redundant protection against an unwanted auto-speedbrake spoiler extension. The commenter further notes that the PSEU auto-speedbrake system is designed with built-in redundancy, and, in order to prevent a critical single-point failure, both outputs from systems 1 and 2 must correspond for the PSEU to signal ground mode. The commenter asserts that there may have been external factors at the geographical location that contributed to this anomaly. Additionally, the commenter suggests that inferring that Model 757 and 767 series airplanes will respond similarly under the same circumstances is speculative and lacks supporting analysis. The commenter believes that this anomaly can be addressed effectively by appropriate flight crew notification and awareness through training.

We do not agree with the commenter. The auto-speedbrake systems for Model 757 and 767 series airplanes are equivalent in design and installation. Reliability of the Model 757 and 767 PSEUs is not adequate, as evidenced by the two incidents of in-flight auto-speedbrake deployment during landing approach that are identified in the proposed rule. This final rule will require operators to add a third signal to the auto-speedbrake that is independent of the PSEUs and that will increase redundancy of the system, in order to meet FAA regulations. No change is made to the final rule in this regard.

Change Cost Impact Information

One commenter asks that gaining access and closeup of the airplane be added to the cost impact section of the proposed rule. The commenter states that this is a significant amount of work,

and provides a breakdown of the cost estimates for each work package.

We do not agree with the commenter. We stated in the ''Cost Impact'' section of the NPRM that, ''The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.'' Thus, no change to the final rule is made in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,654 airplanes of the affected design in the worldwide fleet. The FAA estimates that 583 Model 757 series airplanes and 292 Model 767 series airplanes of U.S. registry will be affected by this AD. The work hours and cost estimates for the required modifications are listed below:

BOEING ALERT SERVICE BULLETIN 757–27A0130*

Work package	Work hours @ $60/wh	Cost per airplane without parts	Fleet cost without parts
1	50	$3,000	$1,749,000
2	32	1,920	1,119,360
3	12	720	419,760

*Parts cost for Model 757 series airplanes is between $8,953 and $10,630 per airplane.

BOEING ALERT SERVICE BULLETIN 767–27A0160*

Work package	Work hours @ $60/wh	Cost per airplane without parts	Fleet cost without parts
1	11	$660	$192,720
2	18	1,080	315,360
3	2	120	35,040
4	15	900	262,800

*Parts cost for Model 767 series airplanes is between $7,132 and $8,224 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–12–04 Boeing: Amendment 39–12776. Docket 2001–NM–75–AD.

Applicability: Model 757–200, –200CB, and –200PF series airplanes, line numbers 1 through 895 inclusive; and Model 767–200, –300, and –300F series airplanes, line numbers 1 through 759 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To provide a second air/ground signal to the auto-speedbrake control system to prevent uncommanded deployment of the auto-speedbrake spoilers during flight, which could result in reduced controllability of the airplane, accomplish the following:

Modifications

(a) Within 60 months after the effective date of this AD: Modify the right main landing gear and auto-speedbrake control system according to Work Packages 1 through 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0130, Revision 1, dated October 11, 2001 (for Model 757 series airplanes); or Work Packages 1 through 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0160, dated December 20, 2000 (for Model 767 series airplanes); as applicable.

Note 2: Modification of the right main landing gear and auto-speedbrake control system done before the effective date of this AD according to Boeing Alert Service Bulletin 757–27A0130, dated August 31, 2000, is considered acceptable for compliance with the applicable modification specified in paragraph (a) of this AD.

Note 3: Boeing Alert Service Bulletin 757–27A0130 specifies that each work package can be done independently or at the same time, in any sequence, but the functional tests in Work Package 3 should be done last. Boeing Alert Service Bulletin 767–27A0160 specifies that each work package can be done independently or at the same time, in any sequence, but Work Package 4 should be done last.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The modifications shall be done in accordance with Boeing Alert Service Bulletin 757–27A0130, Revision 1, dated October 11, 2001; and Boeing Alert Service Bulletin 767–27A0160, dated December 20, 2000, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on July 23, 2002.

Issued in Renton, Washington, on June 4, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–14698 Filed 6–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–36–AD; Amendment 39–12779; AD 2002–12–07]

RIN 2120–AA64

Airworthiness Directives; Textron Lycoming Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes emergency airworthiness directive (AD) 2000–18–53 that was sent previously to all known U.S. owners and operators of certain Textron Lycoming reciprocating engines. That action required before further flight after receipt of that emergency AD, replacement of the oil filter converter plate gasket or the converter plate kit. That action also required, within 10 hours time-in-service (TIS) or within 3 days after the effective date of that emergency AD, inspection of the oil filter base for signs of oil leakage and evidence of gasket extrusion. That action also required replacement of the converter plate gasket at intervals not to exceed 50 hours TIS since the last replacement of the gasket. This amendment requires the same replacements and inspection, and introduces the installation of an improved design gasket or converter plate kit as terminating action for the repetitive gasket replacements. The actions specified in this AD are intended to prevent complete loss of engine oil and subsequent seizing of the engine and possibility of fire, caused by oil leakage between the converter plate and accessory housing.

DATES: Effective July 3, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 3, 2002.

Comments for inclusion in the Rules Docket must be received on or before August 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–36–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in this AD may be obtained from Textron Lycoming, 652 Oliver Street, Williamsport, PA 17701, U.S.A. telephone (570) 323–6181. Information regarding this action may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rocco Viselli, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth Street, 3rd Floor, Valley Stream, NY 11581–1200; telephone (516) 256–7531, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On September 5, 2000, the Federal Aviation Administration (FAA) issued Emergency airworthiness directive (AD) 2000–18–53, applicable to certain Textron Lycoming reciprocating engines. That AD requires the following:

- For engines with more than 50 hours time-since-new (TSN), time-since-overhaul (TSO), or time-since-last replacement of the oil filter plate gasket, replacement of the oil filter converter plate gasket part number (P/N) LW–13388, or the converter plate kit P/N LW–13904.
- For engines with fewer than 50 hours TSN, TSO, or time-since-last replacement of the oil filter converter plate gasket P/N LW–13388, or the converter plate kit P/N LW–13904, inspection of the oil filter base for signs of oil leakage and evidence of gasket extrusion.
- Replacement of converter plate gasket P/N LW–13388 at intervals not to exceed 50 hours TIS since the last replacement of the gasket. The actions are required to be done in accordance

with Textron Lycoming Mandatory Service Bulletin (MSB) 543A, dated August 30, 2000 and Textron Lycoming Service Instruction No. 1453, dated May 9, 1991.

That AD was prompted by reports of certain oil filter converter plate gaskets, P/N LW–13388, extruding from the seat of the oil filter converter plate. The protruding or swelling of the gasket allows oil to leak from between the plate and accessory housing. The actions specified in that AD are intended to prevent complete loss of engine oil and subsequent seizing of the engine and possible fire, caused by oil leakage between the converter plate and accessory housing.

Since emergency AD 2000–18–53 was issued, Textron Lycoming has issued a service bulletin supplement that relieves the requirements of MSB 543A and that eliminates the need for gasket replacement every 50 ours TSN, TSO, or time since the last replacement.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of the following Textron Lycoming Service Information:

• MSB 543A, dated August 30, 2000, and SI No. 1453, dated May 9, 1991, that provide instructions for replacing the oil filter converter plate gasket P/N LW–13388, or the converter plate kit P/N LW–13904.

• Supplement No. 1 to MSB 543A, dated October 4, 2000, that describes procedures for replacing the oil filter converter plate gasket P/N LW–13388, or the converter plate kit P/N LW–13904, with a new improved design.

FAA's Determination of an Unsafe Condition and Required Actions

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued emergency AD 2000–18–53 to prevent complete loss of engine oil and subsequent seizing of the engine and possible fire, caused by oil leakage between the converter plate and accessory housing. This AD requires for engines listed that were shipped from the factory between April 1, 1999 and October 4, 2000, and any engine listed that had the oil filter converter plate gasket replaced with gasket P/N LW–13388, and, any engine listed that had the oil filter converter plate replaced with converter plate kit P/N LW–13904, the following:

• Before further flight after the effective date of this AD, for engines with more than 50 hours TSN or TSO, or time-since-last replacement of the oil filter plate gasket P/N LW–13388, replacement of the oil filter converter plate gasket or the converter plate kit P/N LW–13904.

• Within 10 hours TIS or within 3 days after the effective date of this AD, whichever occurs earlier, for engines with fewer than 50 hours TSN, TSO, or time-since-last replacement of the oil filter converter plate gasket P/N LW–13388, or the converter plate kit P/N LW–13904, inspection of the oil filter base for signs of oil leakage and evidence of gasket extrusion.

• Replacement of the converter plate gasket P/N LW–13388 at intervals not to exceed 50 hours TIS since the last replacement of the gasket.

• As terminating action to the repetitive gasket replacement specified in this AD, replacement of the oil filter converter plate gasket or the oil filter converter plate with a converter plate kit, in accordance with Part II and Part III of Textron Lycoming Supplement 1 to MSB 543A, dated October 4, 2000.

The actions must be done in accordance with the service information described previously.

Immediate Adoption of This AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately on September 5, 2000 to all known U.S. owners and operators of the affected Textron Lycoming reciprocating engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000-NE–36-AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive, Amendment 39–12779, to read as follows:

2002–12–07 Textron Lycoming: Amendment 39–12779. Docket No. 2000–NE–36–AD. Supersedes AD 2000–18–53.

Applicability: This airworthiness directive (AD) is applicable to the reciprocating engine models in the following Table, that were shipped from the factory between April 1, 1999 and October 4, 2000, or rebuilt, or overhauled, or had the oil filter converter plate kit part number (P/N) LW–13904 or gasket P/N LW13388 replaced:

ENGINE APPLICABILITY TABLE

O–320	–H1AD, –H1BD, –H2AD, –H2BD, –H3AD, –H3BD
(L)O–360	–A1AD, –A1F6D, –A1G6D, –A1LD, –A3AD, –A4AD, –A5AD, –E1A6D
IO–360	–A1B6D, –A1D6D, –A3B6D, –A3D6D, –C1E6D, –J1AD, –J1A6D
(L)TO–360	–A1A6D, –C1A6D, –E1A6D, –F1A6D
TIO–360	–C1A6D
(L)HIO–360	–E1AD, –E1BD, –F1AD
O–540	–H1A5D, –H1B5D, –H2A5D, –H2B5D, –J1A5D, –J1B5D, –J1C5D, –J1D5D, –J2A5D, –J2B5D, –J2C5D, –J2D5D, –J3A5D, –J3C5D, –L3C5D
IO–540	–C4D5D, –K1A5D, –K1B5D, –K1E5D, –K1F5D, –K1G5D, –K1J5D, –L1A5D, –L1B5D, –M1A5D, –M1B5D, –M2A5D, –T4A5D, –T4B5D, –T4C5D, –U1A5D, –U1B5D, –V4A5D, –W1A5D, –W3A5D
(L)TIO–540	–K1AD, –S1AD, –AA1AD, –AB1AD, –AB1BD, –F2BD, –J2BD, –N2BD, –R2AD, –T2AD, –V2AD
AEIO–540	–L1B5D
TIO–541	–E Series
TIGO–541	–D1A, –D1B, –E1A
IO–720	–A1BD, –B1BD, –C1BD, –D1BD, –D1CD

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

Compliance

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

To prevent complete loss of engine oil and subsequent seizing of the engine and possibility of fire, caused by oil leakage between the converter plate and accessory housing, do the following:

(a) For engines with more than 50 hours time-since-new (TSN), time-since-overhaul (TSO), or time since the last replacement of the oil filter converter plate gasket, P/N LW–13388, or the converter plate kit, P/N LW–13904, replace the converter plate gasket or converter plate kit in accordance with paragraphs 1 and 2 of Textron Lycoming Mandatory Service Bulletin (MSB) 543A, dated August 30, 2000, and Textron Lycoming Service Instruction (SI) No. 1453, dated May 9, 1991, or Part II of Supplement No. 1 to MSB 543A, dated October 4, 2000, before further flight.

(b) For engines with fewer than 50 hours TSN, TSO, or time since the last replacement of the oil filter converter plate gasket, P/N LW–13388, or the oil converter plate, P/N LW–13904, inspect the gasket within 10 hours time-in-service (TIS) or within 3 days after the effective date of this AD, whichever occurs earlier, for the following:

(1) Inspect the oil filter base for both:

(i) Signs of oil leakage between the oil filter base and the accessory housing; and

(ii) Any evidence of the gasket extruding beyond the perimeter of the base.

(2) If there is any oil leakage, or if the seal is damaged, extruded, displaced, or deteriorated, replace the converter plate gasket or converter plate kit in accordance with paragraphs 1 and 2 of Textron Lycoming MSB 543A, dated August 30, 2000, and Textron Lycoming SI No. 1453, dated May 9, 1991, or Part II of Supplement No. 1 to MSB 543A, dated October 4, 2000, before further flight.

(c) Thereafter, replace the converter plate gasket, P/N LW–13388, or the oil converter plate kit, P/N LW–13904, at intervals not to exceed 50 hours TIS since the last replacement.

(d) Before October 1, 2003, replace the oil filter converter plate gasket or oil filter converter plate kit, in accordance with Part II or Part III respectively, of Supplement No. 1 to MSB 543A, dated October 4, 2000.

Terminating Action

(e) Replacement of oil filter converter plate gasket, or oil filter converter plate in accordance with Part II or Part III of Textron Lycoming Supplement 1 to MSB 543A, dated October 4, 2000, constitutes terminating action to the repetitive gasket replacement specified in paragraph (c) of this AD.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a

location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(h) The inspections and replacements must be done in accordance with the following Textron Lycoming mandatory service bulletin (MSB), MSB supplement, and Service Instruction (SI):

Document No.	Pages	Revision	Date
MSB No. 543A, Total pages: 2	All	Revision A	August 30, 2000.
MSB No. 543A, Supplement No. 1, Total pages: 3	All	Original	October 4, 2000.
SI No. 1453, Total pages: 1	All	Original	May 9, 1991.

The incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Textron Lycoming, 652 Oliver Street, Williamsport, PA 17701, U.S.A. telephone: 570–323–6181. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW, suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective July 3, 2002.

Issued in Burlington, Massachusetts, on June 4, 2002.

Francis A. Favara,

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

[FR Doc. 02–14696 Filed 6–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–39–AD; Amendment 39–12781; AD 2002–12–09]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. (Formerly AlliedSignal Inc. and Garrett Turbine Engine Company) TPE331–11U, –12B, –12JR, –12UA, –12UAR, and –12UHR Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Company) TPE331–11U, –12B, –12JR, –12UA, –12UAR, and –12UHR series turboprop engines. This action requires repetitive Spectrometric Oil Analysis Program (SOAP) sampling, SOAP trend assessment, and inspections and replacement of certain gearbox components. This amendment is prompted by reports of spur gearshaft (bull gear) rim separations and high-speed pinion (HSP) assembly failures. The actions specified in this AD are intended to prevent bull gear rim separations and HSP assembly failures from abnormal gear wear, which could result in uncontained gearbox fragmentation, in-flight shutdowns, and engine rotor overspeed events.

DATES: Effective July 3, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 3, 2002.

Comments for inclusion in the Rules Docket must be received on or before August 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–39–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Honeywell Engines, Systems and Services, Technical Data Distribution, M/S 2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone: (602) 365–2493 (General Aviation), (602) 365–5535 (Commercial); fax: (602) 365–5577 (General Aviation and Commercial). This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5246; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: There have been 22 reported spur gearshaft (bull gear) rim separations and 25 HSP assembly failures in Honeywell TPE331–11 and –12 series turboprop engines. These failures caused a prop gear train disconnection from the power group and most resulted in in-flight shutdowns. Three of the six bull gear separations in TPE331–11U series engines occurred after the bull gears had previously been operated in TPE331–12UA, –12UA, or –12UHR series engines. There have been 10 incidents of gear fragments penetrating the gearbox housing in 16 of the bull gear rim separation events in TPE331–12UA, –12UA, or –12UHR series engines. Similarly, there have been three reported incidents of gear fragments penetrating the gearbox housing in six of the bull gear rim separation events in TPE331–11U series engines. In one case in a TPE331–11U series engine and in two cases in TPE331–12 series engines, oil was ingested through the inlet after the uncontained gear fragmentation that resulted in surge, uncommanded engine shutdown, and secondary engine damage. In addition, there have been five incidents of gearbox debris or uncontained bull gear fragments being ejected from the engine's inlet which were then struck by the propeller and redirected against the aircraft fuselage. In one of these incidents, a bull gear fragment from a TPE331–12UAR series engine penetrated the cabin.

The FAA has determined that high loading between the bull gear and HSP gears, bull gear tooth profile, and distortion of the intermediate gearbox housings cause abnormal gear wear and subsequent failures of the bull gear and HSP. Even though the gearbox in the TPE331–12 series engine is similar to the TPE331–11U series engine, the TPE331–12 series engines, which have experienced more failures than TPE331–11U series engines, have accumulated more time at higher load than in the TPE331–11U series engine. In addition, coatings used for vibration dampening,

and surface finish may influence bull gear tooth wear. This condition, if not corrected, could result in separation of the bull gear and uncontainment of low energy fragments that can damage the engine or the aircraft and may injure passengers. Also, engine surge or uncontained rotor overspeed due to oil ingestion through the engine inlet may occur. The FAA has determined that abnormal gear wear can be detected using Spectrometric Oil Analysis Program (SOAP) sampling and SOAP trend assessment.

The FAA has determined that Honeywell's automated trend assessment program is the best method to predict the premature failure of the bull gear. Honeywell's trend assessment program dictates a particular format for data from each SOAP test sample. That format is used by Honeywell's approved SOAP labs and the labs have met all the testing procedures, standards, reporting requirements established by the FAA. In addition, the Honeywell approved SOAP labs have demonstrated the necessary speed and efficiency in determining the sample's acceptance, and in transferring data to Honeywell's automated trend assessment program. Therefore, the FAA is requiring that operators use Honeywell's approved SOAP labs in order to allow the use of Honeywell's trend assessment program, thereby increasing the likelihood that a premature failure of a bull gear will be identified before failure.

Due to the continued operation of gears that are misaligned, high-cycle fatigue damage of the bull gear, HSP, and the torque shaft assembly with its nut and pin may occur and may be undetectable. The FAA has determined that these components will never be serviceable for continued aircraft use. However, bull gears and HSP's that are removed as unserviceable during subsequent recurrent inspections after improved gearbox alignment may be retained as matched sets for possible future aircraft use. After the publication of this AD, the FAA might in the future, permit gears removed during recurrent and unscheduled inspections to be returned to service after appropriate inspections. However, Honeywell has informed the FAA that they will not provide acceptance criteria for returning these parts to service.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of the following Honeywell International Inc. Alert Service Bulletins (ASB):

• TPE331–A79–0034, Revision 3, dated October 2, 2001 or Revision 4 dated April 5, 2002 describes procedures for a repetitive engine oil and filter SOAP sampling and assessment and lists Honeywell's Authorized SOAP Labs.

• TPE331–A72–2087 dated October 10, 2001 and Revision 1 dated November 16, 2001; TPE331–A72–2088 dated October 10, 2001, Revision 1 dated November 16, 2001, and Revision 2, dated February 20, 2002; TPE331–A72–2092 dated October 10, 2001 and Revision 1 dated November 16, 2001; and TPE331–A72–2093 dated October 10, 2001 and Revision 1 dated November 16, 2001 describe procedures for the inspection and replacement of gearbox components.

• TPE331–72–2090RWK dated October 10, 2001, TPE331–72–2091RWK dated October 10, 2001; TPE331–72–2094RWK dated October 10, 2001; and TPE331–72–2095RWK dated October 10, 2001, describe procedures for the rework of gearbox components.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Company) TPE331–11U, –12B, –12JR, –12UA, –12UAR, and –12UHR series turboprop engines of the same type design, this AD is being issued to prevent bull gear rim separations and HSP assembly failures from abnormal gear wear, which could result in uncontained gearbox fragmentation, in-flight shutdowns, and engine rotor overspeed events by requiring:

• Repetitive SOAP and filter analyses combined with special trend assessments, and

• Repetitive inspections of certain gearbox components, replacement of specific gears, and if necessary, the rework of gearbox components.

These actions must be done in accordance with the service bulletins described previously.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NE–39–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared

and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–12–09 Honeywell International Inc.: Amendment 39–12781. Docket No. 2001–NE–39–AD.

Applicability: This airworthiness directive (AD) is applicable to Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Company) TPE331–11U, –12B, –12JR, –12UA, –12UAR, and –12UHR series turboprop engines. These engines are installed on, but not limited to, Fairchild SA227 series (Metro), and Jetstream 3201 series airplanes.

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

Compliance

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

To prevent bull gear rim separations and high-speed pinion (HSP) assembly failures from abnormal gear wear, which could result in uncontained gearbox fragmentation, in-flight shutdowns, engine rotor overspeed events, do the following:

(a) Except for the TPE331–12JR engine series, submit Spectrometric Oil Analysis Program (SOAP) samples of the oil and filter to Honeywell approved labs in accordance with Paragraph 2. A. (1) of the Accomplishment Instructions of Honeywell International Inc. Alert Service Bulletin (ASB) TPE331–A79–0034 Revision 3 dated October 3, 2001 or Revision 4 dated April 5, 2002, at 80 to 120 hours time-in-service (TIS) after the effective date of this AD and at 80 to 120 hour TIS intervals thereafter.

(b) If either of the following conditions occur, make the necessary repairs in accordance with Paragraph 2.A.(3)(b)*1* or 2.A.(3) of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A79–0034 Revision 3, dated October 3, 2001; or Revision 4, dated April 5, 2002, within 50 hours TIS after receiving the results from the unacceptable sample analysis or trend assessment:

(1) If the SOAP test lab sample is determined to be unacceptable in accordance with Paragraph 2.A.(2)(b)*1* in the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A79–0034 Revision 3 dated October 3, 2001 or Revision 4 dated April 5, 2002, or

(2) If Honeywell's supplementary trend assessment is unacceptable in accordance with Paragraph 2.A.(3) in the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A79–0034 Revision 3 dated October 3, 2001; or Revision 4 dated April 5, 2002.

TPE331–12UA, –12UAR, and –12UHR Engine Maintenance

(c) On TPE331–12UA, –12UAR, and –12UHR engines, inspect, replace, and if necessary, rework specified gearbox components as follows:

(1) At the next turbine (hot) section inspection, gearbox inspection, engine overhaul, or when the gearbox diaphragm module is out of the engine, whichever occurs first, after the effective date of this AD, comply with the following:

(i) Paragraphs 2.A. (2) through 2.A. (11) of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2087, Revision 1, dated November 16, 2001 or ASB TPE331–A72–2087, dated October 10, 2001.

(ii) Paragraphs 2.A. (2) through 2.A. (8) of the Accomplishment Instructions of Honeywell International Inc. SB TPE331–72–2090RWK, dated October 10, 2001.

(iii) Paragraphs 2.A. (2) through 2.D. (4) of the Accomplishment Instructions of Honeywell International Inc. SB TPE331–72–2091RWK, dated October 10, 2001.

(2) Thereafter, do the following:

(i) Inspect for wear and replace gearbox components and comply with limitations on interchangeability in accordance with Paragraphs 2.B. and 2.C. (2) through 2.C. (13) of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2087, Revision 1, dated November 16, 2001 or ASB TPE331–A72–2087, dated October 10, 2001 at intervals not to exceed 3,600 hours TIS since the last replacement of the bull gear, part number (P/N) 3108295–1, and the HSP, P/N 3101741–2, or since the last overhaul of the diaphragm matched housing set, whichever occurs first.

(ii) Comply with limitations on interchangeability in accordance with Paragraph 2.B. of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2087, Revision 1, dated November 16, 2001 or ASB TPE331–A72–2087, dated October 10, 2001 whenever certain gearbox parts, identified in Paragraph 2.B. of ASB TPE331–A72–2087, are removed from the engine following compliance with paragraph (c)(1) or (c)(2)(i) of this AD.

(iii) Comply with limitations on interchangeability and inspect for wear in accordance with Paragraphs 2.B. and 2.D. of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2087, Revision 1, dated November 16, 2001 or ASB TPE331–A72–2087, dated October 10, 2001 whenever the engine is removed from the aircraft and disassembled to the extent that the diaphragm module is accessed after 500 hours TIS following compliance with paragraph (c)(1) or (c)(2)(i) of this AD.

TPE331–12B Engines

(d) On TPE331–12B engines, inspect, replace, and if necessary, rework specified gearbox components as follows:

(1) At the next engine overhaul or when the bull gear first requires replacement, whichever occurs first, after the effective date of this AD, comply with the following:

(i) Paragraphs 2.A. (2) through 2.A. (11) of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2092, Revision 1, dated November 16, 2001 or ASB TPE331–A72–2092, dated October 10, 2001.

(ii) Paragraphs 2.A. (2) through 2.A. (8) of the Accomplishment Instructions of Honeywell International Inc. SB TPE331–72–2094RWK, dated October 10, 2001.

(iii) Paragraphs 2.A. (2) through 2.C. (4) of the Accomplishment Instructions of Honeywell International Inc. SB TPE331–72–2095RWK, dated October 10, 2001.

(2) Thereafter, do the following:

(i) Inspect for wear and replace gearbox components and comply with limitations on interchangeability in accordance with Paragraphs 2.B. and 2.C. (2) through 2.C. (13) of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2092, Revision 1, dated November 16, 2001 or ASB TPE331–A72–2092, dated October 10, 2001, at intervals not to exceed 3,100 hours TIS since the last replacement of the bull gear, P/N 3108296–1, and the HSP, P/N 3101741–4, or since the last overhaul of the diaphragm matched housing set, whichever occurs first.

(ii) Comply with limitations on interchangeability in accordance with Paragraph 2.B. of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2092, Revision 1, dated November 16, 2001 or ASB TPE331–A72–2092, dated October 10, 2001, whenever certain gearbox parts, identified in Paragraph 2.B. of ASB TPE331–A72–2092, are removed from the engine following compliance with paragraph (d)(1) or (d)(2)(i) of this AD.

(iii) Comply with limitations on interchangeability and inspect for wear in accordance with Paragraphs 2.B. and 2.D. of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2092, Revision 1, dated November 16, 2001 or ASB TPE331–A72–2092, dated

October 10, 2001, whenever the engine is removed from the aircraft and disassembled to the extent that the diaphragm module is accessed after 500 hours TIS following compliance with paragraphs (d)(1) or (d)(2)(i) of this AD.

TPE331–11U Engines With Bull Gear P/N 3107161–1

(e) On TPE331–11U engines with bull gear P/N 3107161–1, inspect, replace and if necessary, rework specified gearbox components as follows:

(1) At the next hot section inspection, gearbox inspection, engine overhaul, or when the gearbox diaphragm module is out of the engine, whichever occurs first after the effective date of this AD, comply with the following:

(i) Paragraphs 2.A. (2) through 2.A. (11) of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2088, Revision 2, dated February 20, 2002, Revision 1, dated November 16, 2001, or original, dated October 10, 2001.

(ii) Paragraphs 2.A. (2) through 2.A. (8) of the Accomplishment Instructions of Honeywell International Inc. SB TPE331–72–2090RWK, dated October 10, 2001.

(iii) Paragraphs 2.A. (2) through 2.D. (4) of the Accomplishment Instructions of Honeywell International Inc. SB TPE331–72–2091RWK, dated October 10, 2001.

(2) Thereafter, do the following:

(i) Inspect for wear and replace gearbox components and comply with limitations on interchangeability in accordance with Paragraphs 2.B. and C. (2) through C. (13) of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2088, Revision 2, dated February 20, 2002, Revision 1, dated November 16, 2001 or original, dated October 10, 2001, at intervals not to exceed 9,000 hours time-in-service (TIS) since the last replacement of the bull gear, P/N 3108295–1, and the HSP, P/N 3101741–2, or since the last overhaul of the diaphragm matched housing set, whichever occurs first.

(ii) Comply with limitations on interchangeability in accordance with Paragraph 2.B. of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2088, Revision 2, dated February 20, 2002, Revision 1, dated November 16, 2001, or original, dated October 10, 2001, whenever certain gearbox parts, identified in Paragraph 2.B. of ASB TPE331–A72–2088, are removed from the engine following compliance with Paragraph (e)(1) or (e)(2)(i) of this AD.

(iii) Comply with limitations on interchangeability and inspect for wear in accordance with Paragraphs 2.B. and 2.D. of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2088, Revision 2, dated February 20, 2002, Revision 1, dated November 16, 2001, or original, dated October 10, 2001 whenever the engine is removed from the aircraft and disassembled to the extent that the diaphragm module is accessed after 500 hours TIS following compliance with paragraph (e)(1) or (e)(2)(i) of this AD.

All OtherTPE331–11U Engines Without Bull Gear P/N 3107161–1

(f) On TPE331–11U engines, that do not have a bull gear, P/N 3107161–1, inspect, replace, and if necessary, rework specified gearbox components as follows:

(1) At the next gearbox inspection, engine overhaul, or when the gearbox diaphragm module is out of the engine, whichever occurs first after the effective date of this AD, comply with the following:

(i) Paragraphs 2.A. (2) through 2.A. (11) of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2088, Revision 2, dated February 20, 2002, Revision 1, dated November 16, 2001, or original, dated October 10, 2001.

(ii) Paragraphs 2.A. (2) through 2.A. (8) of the Accomplishment Instructions of Honeywell International Inc. SB TPE331–72–2090RWK, dated October 10, 2001.

(iii) Paragraphs 2.A. (2) through 2.D. (4) of the Accomplishment Instructions of Honeywell International Inc. SB TPE331–72–2091RWK, dated October 10, 2001.

(2) Thereafter, do the following:

(i) Inspect for wear and replace gearbox components and comply with limitations on interchangeability in accordance with Paragraphs 2.B. and 2.C. (2) through 2.C. (13) of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2088, Revision 2, dated February 20, 2002, Revision 1, dated November 16, 2001, or original, dated October 10, 2001, at intervals not to exceed 9,000 hours TIS since the last replacement of the bull gear, P/N 3108295–1, and the HSP, P/N 3101741–2, or since the last overhaul of the diaphragm matched housing set, whichever occurs first.

(ii) Comply with limitations on interchangeability in accordance with Paragraph 2.B. of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2088, Revision 2, dated February 20, 2002, Revision 1, dated November 16, 2001, or original, dated October 10, 2001, whenever certain gearbox parts, identified in Paragraph 2.B.of ASB TPE331–A72–2088, are removed from the engine following compliance with Paragraph (f)(1) or (f)(2)(i) of this AD.

(iii) Comply with limitations on interchangeability and inspect for wear in accordance with Paragraphs 2.B. and 2.D.of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2088, Revision 2, dated February 20, 2002, Revision 1, dated November 16, 2001, or original, dated October 10, 2001, whenever the engine is removed from the aircraft and disassembled to the extent that the diaphragm module is accessed after 500 hours TIS following compliance with paragraph (f)(1) or (f)(2)(i) of this AD.

TPE331–12JR Engines

(g) On TPE331–12JR engines, inspect, replace, and if necessary, rework specified gearbox components as follows:

(1) At the next gearbox inspection, engine overhaul, or when the bull gear requires replacement, whichever occurs first, comply with the following:

(i) Paragraphs 2.A. (2) through 2.A. (11) of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2093, Revision 1, dated November 16, 2001 or ASB TPE331–A72–2093, dated October 10, 2001.

(ii) Paragraphs 2.A. (2) through 2.A. (8) of the Accomplishment Instructions of Honeywell International Inc. SB TPE331–72–2090RWK, dated October 10, 2001.

(iii) Paragraphs 2.A. (2) through 2.D. (4) of the Accomplishment Instructions of Honeywell International Inc. SB TPE331–72–2091RWK, dated October 10, 2001.

(2) Thereafter, do the following:

(i) Inspect for wear and replace gearbox components and comply with limitations on interchangeability in accordance with Paragraphs 2.B. and 2.C. (2) through C. (13) of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2093, Revision 1, dated November 16, 2001 or ASB TPE331–A72–2093, dated October 10, 2001, at intervals not to exceed 5,100 hours TIS since the last replacement of the bull gear, P/N 3108295–1, and the HSP, P/N 3101741–2, or since the last overhaul of the diaphragm matched housing set, whichever occurs first.

(ii) Comply with limitations on interchangeability in accordance with Paragraph 2.B. of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2093, Revision 1, dated November 16, 2001 or ASB TPE331–A72–2093, dated October 10, 2001, whenever certain gearbox parts, identified in Paragraph 2.B. of ASB TPE331–A72–2093, are removed from the engine following compliance with Paragraph (g)(1) or (g)(2)(i) of this AD.

(iii) Comply with limitations on interchangeability and inspect for wear in accordance with Paragraphs 2.B. and 2.D. of the Accomplishment Instructions of Honeywell International Inc. ASB TPE331–A72–2093, Revision 1, dated November 16, 2001 or ASB TPE331–A72–2093, dated October 10, 2001, whenever the engine is removed from the aircraft and disassembled to the extent that the diaphragm module is accessed after 500 hours TIS following compliance with paragraph (g)(1) or (g)(2)(i) of this AD.

Definitions

(h) For the purposes of this AD, as stated in the incorporated service bulletins, the word ''scrap'' must be interpreted as ''not serviceable.'' Any reference in these bulletins to the intentional damage of gear teeth is not mandatory.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Documents That Have Been Incorporated by Reference

(k) The actions required by this AD must be done in accordance with the following Honeywell International Inc. Service Bulletins (SB's):

Document No.	Pages	Revision	Date
ASB TPE331–A79–0034	1	4	April 5, 2002.
	2	2	July 23, 2001.
	3–5	3	October 2, 2001.
	6–7	4	April 5, 2002.
	8–10	3	October 2, 2001.
Total pages: 10			
ASB TPE331–A79–0034	1	3	October 2, 2001.
	2	2	July 23, 2001.
	3–10	3	October 2, 2001.
Total pages: 10			
ASB TPE331–A72–2087	1	1	November 16, 2001.
	2–3	Original	October 10, 2001.
	4–6	1	November 16, 2001.
	7–9	Original	October 10, 2001.
	10	1	November 16, 2001.
	11–13	Original	October 10, 2001.
	14–15	1	November 16, 2001.
	16	Original	October 10, 2001.
	17	1	November 16, 2001.
	18	Original	October 10, 2001.
Total pages: 18			
ASB TPE331–A72–2087	All	Original	October 10, 2001.
Total pages: 18			
ASB TPE331–A72–2088	1	2	February 20, 2002.
	2	Original	October 10, 2001.
	3–5	1	November 16, 2001.
	6–7	Original	October 10, 2001.
	8	2	February 20, 2002.
	9–11	Original	October 10, 2001.
	12	1	November 16, 2001.
	13	2	February 20, 2002.
	14	Original	October 10, 2001.
	15	1	November 16, 2001.
	16	Original	October 10, 2001.
Total pages: 16			
ASB TPE331–A72–2088	1	1	November 16, 2001.
	2	Original	October 10, 2001.
	3–5	1	November 16, 2001.
	6–7	Original	October 10, 2001.
	8	1	November 16, 2001.
	9–11	Original	October 10, 2001.
	12–13	1	November 16, 2001.
	14	Original	October 10, 2001.
	15	1	November 16, 2001.
	16	Original	October 10, 2001.
Total pages: 16			
ASB TPE331–A72–2088	All	Original	October 10, 2001.
Total pages: 16			
SB TPE331–72–2090RWK	All	Original	October 10, 2001.
Total pages: 10			
SB TPE331–72–2091RWK	All	Original	October 10, 2001.
Total pages: 12			
ASB TPE331–A72–2092	1	1	November 16, 2001.
	2	Original	October 10, 2001.
	3–5	1	November 16, 2001.
	6–7	Original	October 10, 2001.
	8	1	November 16, 2001.
	9–11	Original	October 10, 2001.
	12	1	November 16, 2001.
	13	Original	October 10, 2001.
	14	1	November 16, 2001.
	15	Original	October 10, 2001.
	16	1	November 16, 2001.
	17–18	Original	October 10, 2001.
Total pages: 18			
ASB TPE331–A72–2092	All	Original	October 10, 2001.
Total pages: 18			

Document No.	Pages	Revision	Date
ASB TPE331–A72–2093	1	1	November 16, 2001.
	2	Original	October 10, 2001.
	3–4	1	November 16, 2001.
	5–7	Original	October 10, 2001.
	8	1	November 16, 2001.
	9–11	Original	October 10, 2001.
	12–13	1	November 16, 2001.
	14	Original	October 10, 2001.
	15	1	November 16, 2001.
	16	Original	October 10, 2001.
Total pages: 16			
ASB TPE331–A72–2093	All	Original	October 10, 2001.
Total pages: 16			
SB TPE331–72–2094RWK	All	Original	October 10, 2001.
Total pages: 8			
SB TPE331–72–2095RWK	All	Original	October 10, 2001.
Total pages: 8			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Honeywell Engines, Systems and Services, Technical Data Distribution, M/S 2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone: (602) 365–2493 (General Aviation), (602) 365–5535 (Commercial); fax: (602) 365–5577 (General Aviation and Commercial). Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(l) This amendment becomes effective on July 3, 2002.

Issued in Burlington, Massachusetts, on June 5, 2002.

Francis A. Favara,

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

[FR Doc. 02–14855 Filed 6–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–130–AD; Amendment 39–12782; AD 2002–12–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 airplanes, that requires installation of two arcing protection brackets below and behind the circuit breakers located in the generator control rack in the electrical/electronics compartment. The actions specified by this AD are intended to prevent arcing between circuit breaker terminals and adjacent equipment and structure located in the generator control rack in the electrical/electronics compartment, which, if not corrected, could result in possible electrical shock to maintenance personnel during maintenance operations. This action is intended to address the identified unsafe condition.

DATES: Effective July 23, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* George Y. Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCI text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on March 21, 2002 (67 FR 13111). That action proposed to require installation of two arcing protection brackets below and behind the circuit breakers located in the generator control rack in the electrical/electronics compartment.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed by the supplemental NPRM.

Cost Impact

There are approximately 26 Model MD–90–30 airplanes of the affected design in the worldwide fleet. The FAA estimates that 13 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours

per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $200 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,160, or $320 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–12–10 McDonnell Douglas: Amendment 39–12782. Docket 2001–NM–130–AD.

Applicability: Model MD–90–30 airplanes, certificated in any category; as identified in Boeing Service Bulletin MD90–24–007, Revision 02, dated July 16, 2001.

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

Compliance

Required as indicated, unless accomplished previously.

To prevent arcing between circuit breaker terminals and adjacent equipment and structure located on the generator control rack in the electrical/electronics compartment, and consequent electrical shock to maintenance personnel during maintenance operations, accomplish the following:

Installation

(a) Within one year after the effective date of this AD, install two arcing protection brackets below and behind the circuit breakers located in the generator control rack in the electrical/electronics compartment per the Accomplishment Instructions of Boeing Service Bulletin MD90–24–007, Revision 02, dated July 16, 2001.

Note 2: Installation of two arcing protection brackets below and behind the circuit breakers located in the generator control rack in the electrical/electronics compartment per the Accomplishment Instructions of Boeing Service Bulletin MD90–24–007, dated February 7, 1996; or Revision 01, dated August 31, 2000; is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Incorporation by Reference

(d) The installation shall be done per Boeing Service Bulletin MD90–24–007, Revision 02, dated July 16, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on July 23, 2002.

Issued in Renton, Washington, on June 7, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–15105 Filed 6–17–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9000]

RIN 1545–BA62

Modification of Tax Shelter Rules III

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: These regulations modify the rules relating to the filing by certain taxpayers of a statement with their Federal income tax returns under section 6011(a) and the registration of confidential corporate tax shelters under section 6111(d). These rules also affect the list maintenance requirement under

section 6112. These regulations affect taxpayers participating in certain reportable transactions, persons responsible for registering confidential corporate tax shelters, and persons responsible for maintaining lists of investors in potentially abusive tax shelters. The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective June 14, 2002.

Applicability Date: For dates of applicability, see § 1.6011–4T(g) and § 301.6111–2T(h).

FOR FURTHER INFORMATION CONTACT: Danielle M. Grimm or Tara P. Volungis, 202–622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these regulations have been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1685.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

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

Background

This document amends 26 CFR parts 1 and 301 to provide modified rules relating to the disclosure of reportable transactions by certain individuals, trusts, partnerships, S corporations, and other corporations on their Federal income tax returns under section 6011 and the registration of confidential corporate tax shelters under section 6111.

On February 28, 2000, the IRS issued temporary and proposed regulations regarding section 6011 (TD 8877, REG–103735–00), section 6111 (TD 8876, REG–110311–98), and section 6112 (TD 8875, REG–103736–00)(collectively, the February regulations). The February regulations were published in the **Federal Register** (65 FR 11205, 65 FR 11215, 65 FR 11211) on March 2, 2000. On August 11, 2000, the IRS issued temporary and proposed regulations regarding sections 6011, 6111, and 6112 (TD 8896, REG–103735–00, REG–110311–98, REG–103736–00) (collectively, the August 2000 regulations). The August 2000 regulations were published in the **Federal Register** (65 FR 49909) on August 16, 2000, modifying the February regulations. On August 2, 2001, the IRS issued temporary and proposed regulations regarding sections 6011, 6111, and 6112 (TD 8961, REG–103735–00, REG–110311–98, REG–103736–00) (collectively, the August 2001 regulations). The August 2001 regulations were published in the **Federal Register** (66 FR 41133) on August 7, 2001, further modifying the February 2000 regulations.

The rules under sections 6011, 6111, and 6112 are designed to provide the IRS and Treasury with information needed to evaluate potentially abusive transactions. The IRS and Treasury have considered and evaluated compliance with the disclosure, registration, and list maintenance requirements under sections 6011, 6111, and 6112 and have determined that certain additional changes to the temporary and proposed regulations are necessary to improve compliance with the regulations and to carry out the purposes of sections 6011, 6111, and 6112. The IRS and Treasury continue to evaluate all the comments and recommendations received. Moreover, the IRS and Treasury intend to make substantial additional changes to the rules under sections 6011, 6111, and 6112 in order to establish a more effective disclosure regime and to improve compliance as announced in Treasury's Plan to Combat Abusive Tax Avoidance Transactions (PO–2018), released on March 20, 2002. See *http://www.treas.gov/press/releases/po2018.htm*.

Explanation of Provisions

1. Application of § 1.6011–4T to Individuals, Trusts, Partnerships, and S Corporations

Section 1.6011–4T generally provides that certain corporate taxpayers must disclose their participation in listed and other reportable transactions that meet the projected tax effect test by attaching a written statement to their Federal income tax returns. It has been determined that a number of these transactions are entered into by noncorporate taxpayers. Accordingly, in order to obtain information regarding potentially abusive transactions entered into by noncorporate taxpayers, the requirement to disclose under § 1.6011–4T is extended to individuals, trusts, partnerships, and S corporations that participate, directly or indirectly, in listed transactions. Thus, if a partnership or an S corporation participates in a listed transaction, that partnership or S corporation must disclose its participation under § 1.6011–4T and the partners and shareholders of the partnership or S corporation, respectively, also must disclose their participation under § 1.6011–4T. The IRS and Treasury plan to extend in future guidance the requirement to disclose under § 1.6011–4T to other reportable transactions entered into by individuals, trusts, partnerships, and S corporations.

2. Indirect Participants

Section 1.6011–4T makes reference to taxpayers who participate directly or indirectly in reportable transactions. In order to obtain information about potentially abusive transactions entered into by taxpayers, the IRS and Treasury have provided clarification regarding indirect participation in a reportable transaction. A taxpayer will have indirectly participated in a reportable transaction if the taxpayer knows or has reason to know that the tax benefits claimed from the taxpayer's transaction are derived from a reportable transaction. However, this clarification does not imply that a taxpayer's participation in a transaction did not otherwise qualify as indirect participation in a reportable transaction for purposes of § 1.6011–4T, as in effect prior to June 14, 2002.

For example, Notice 95–53 (1995–2 C.B. 334), describes a lease stripping transaction in which one party (the transferor) assigns the right to receive future payments under a lease of tangible property and receives consideration which the transferor treats as current income. The transferor later transfers the property subject to the lease in a transaction intended to qualify as a substituted basis transaction, for example, a transaction described in section 351. In return, the transferor receives stock (with low value and high basis) from the transferee corporation. The transferee corporation claims the deductions associated with the high basis property subject to the lease. The transferor and transferee corporation have directly participated in the listed transaction. If the transferor subsequently transfers the high basis/low value stock to a taxpayer in another transaction intended to qualify as a substituted basis transaction and the taxpayer uses the stock to generate a loss, and if the taxpayer knows or has reason to know that the tax loss claimed was derived from the lease stripping

transaction, then the taxpayer is indirectly participating in a reportable transaction. Accordingly, the taxpayer must disclose the reportable transaction and the manner of the taxpayer's indirect participation in the reportable transaction under the provisions of § 1.6011–4T.

3. Substantially Similar Transactions

Sections 1.6011–4T and 301.6111–2T make reference to *substantially similar* transactions. Some taxpayers and promoters have applied the *substantially similar* standard in an overly narrow manner to avoid disclosure. For instance, some taxpayers and promoters have made subtle and insignificant changes to a listed transaction in order to claim that their transactions are not subject to disclosure. Others have taken the position that their transaction is not substantially similar to a listed transaction because they have an opinion concluding that their transaction is proper. The IRS and Treasury believe that these interpretations are improper. Accordingly, the regulations are modified in § 1.6011–4T and § 301.6111–2T to clarify that the term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax benefits and that is either factually similar or based on the same or similar tax strategy. Further, the term *substantially similar* must be broadly construed in favor of disclosure. This modification does not imply that a transaction was not otherwise the same as or substantially similar to a listed transaction prior to this modification.

For example, Notice 2000–44 (2000–2 C.B. 255), sets forth a listed transaction involving offsetting options transferred to a partnership where the taxpayer claims basis in the partnership for the cost of the purchased options but does not reduce basis under section 752 as a result of the partnership's assumption of the taxpayer's obligation with respect to the options. Transactions using short sales, futures, derivatives or any other type of offsetting obligations to inflate basis in a partnership interest would be the same as or substantially similar to the transaction described in Notice 2000–44. Moreover, use of the inflated basis in the partnership interest to diminish gain that would otherwise be recognized on the transfer of a partnership asset would also be the same as or substantially similar to the transaction described in Notice 2000–44.

As another example, Notice 2001–16 (2001–1 C.B. 730), sets forth a listed transaction involving a seller (X) who desires to sell stock of a corporation (T), an intermediary corporation (M), and a buyer (Y) who desires to purchase the assets (and not the stock) of T. M agrees to facilitate the sale to prevent the recognition of the gain that T would otherwise report. Notice 2001–16 describes M as a member of a consolidated group that has a loss within the group or as a party not subject to tax. Transactions utilizing different intermediaries to prevent the recognition of gain would be the same as or substantially similar to the transaction described in Notice 2001–16. An example is a transaction in which M is a corporation that does not file a consolidated return but which buys T stock, liquidates T, sells assets of T to Y, and offsets the gain recognized on the sale of those assets with currently generated losses.

4. Projected Tax Effect Test for Listed Transactions

Section 1.6011–4T provides that a reportable transaction is a transaction that meets the projected tax effect test and is either a listed transaction or a transaction that has at least two of five specified characteristics. Under § 1.6011–4T, the projected tax effect test for listed transactions is met if the taxpayer reasonably estimates that the transaction will reduce the taxpayer's Federal income tax liability by more than $1 million in any single taxable year or by a total of more than $2 million for any combination of taxable years in which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability. The IRS and Treasury have determined that the projected tax effect test for listed transactions results in inadequate disclosure. Accordingly, the projected tax effect test will no longer apply to listed transactions. Thus, any individual, trust, partnership, S corporation, or other corporation that participates in a listed transaction must report it under the provisions of § 1.6011–4T.

5. Time of Providing Disclosure

In general, the disclosure statement for a reportable transaction must be attached to the taxpayer's Federal income tax return for each taxable year for which the taxpayer's Federal income tax liability is affected by the taxpayer's participation in the transaction. In the case of a taxpayer that is a partnership or an S corporation, the disclosure statement for a listed transaction must be attached to the taxpayer's Federal income tax return for each taxable year ending with or within the taxable year of any partner or shareholder whose income tax liability is affected or is reasonably expected to be affected by the partnership's or the S corporation's participation in the transaction. In addition, at the same time that the disclosure statement is first attached to the taxpayer's Federal income tax return, the taxpayer must file a copy of that disclosure statement with the Office of Tax Shelter Analysis.

If a transaction becomes a reportable transaction (e.g., the transaction subsequently becomes one identified in published guidance as a listed transaction described in § 1.6011–4T(b)(2), or there is a change in facts affecting the expected Federal income tax effect of the transaction) on or after the date the taxpayer has filed the return for the first taxable year for which the transaction affected the taxpayer's or a partner's or a shareholder's Federal income tax liability, the disclosure statement must be filed as an attachment to the taxpayer's Federal income tax return next filed after the date the transaction becomes a reportable transaction (whether or not the transaction affects the taxpayer's or any partner's or shareholder's Federal income tax liability for that year) and at that time a copy of that disclosure statement must be filed with the Office of Tax Shelter Analysis. Notwithstanding the effective date of these regulations, for purposes of § 1.6011–4T, as in effect prior to June 14, 2002, a corporate taxpayer was required to disclose a transaction that later became reportable on the corporation's next filed Federal income tax return even if the transaction did not affect the corporation's Federal income tax liability for that year.

Regardless of whether the taxpayer plans to disclose the transaction under other published guidance, for example, Rev. Proc. 94–69 (1994–2 C.B. 804), the taxpayer also must disclose the transaction in the time and manner provided for under the provisions of this regulation. Notwithstanding the effective date of these regulations, a corporate taxpayer was required to disclose a transaction in the time and manner provided for in § 1.6011–4T in effect prior to June 14, 2002, regardless of whether the taxpayer planned to disclose the transaction under other published guidance.

Effective Dates

The regulations are applicable June 14, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant

regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the time required to prepare or retain the disclosure is minimal and will not have a significant impact on those small entities that are required to provide disclosure. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Danielle M. Grimm and Tara P. Volungis, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6011–4T is amended as follows:

1. The heading of § 1.6011–4T is amended by removing the language ''corporate''.

2. The heading of paragraph (a) is revised.

3. Paragraph (a) is amended by adding ''(1) *In general.*'' after the heading.

4. Newly designated paragraph (a)(1) is amended by adding the language ''corporate'' before ''taxpayer'' in the first sentence, and by removing the second sentence and adding three new sentences in its place.

5. Paragraphs (a)(2) and (a)(3) are added.

6. Paragraph (b)(1) is amended by revising the first sentence.

7. Paragraphs (b)(1)(i) and (b)(1)(ii) are added.

8. Paragraph (b)(4)(i) is amended by removing the first sentence.

9. Paragraph (b)(5) *Example 3* is amended by revising the seventh sentence.

10. Paragraphs (c)(1)(iii) and (c)(1)(v) are revised.

11. Paragraph (c)(2) *Example* is amended by adding the language ''*Example.*'' after ''of this section:'' in the first sentence and by adding ''as in effect at that time.'' to the end of the third sentence.

12. Paragraph (d)(1) is revised.

13. Paragraph (e) is amended by removing the language ''corporation's'' in the first sentence and adding ''taxpayer's'' in its place.

14. Paragraph (g) is revised.

The revisions and additions read as follows:

§ 1.6011–4T Requirement of statement disclosing participation in certain transactions by taxpayers (Temporary).

(a) *Disclosure requirement*—(1) *In general.* * * * Every individual, trust, partnership, and S corporation that has participated, directly or indirectly, in a reportable transaction within the meaning of paragraph (b)(2) of this section must attach to its return for the taxable year described in paragraph (d) of this section a disclosure statement in the form prescribed by paragraph (c) of this section. For this purpose, a taxpayer will have indirectly participated in a reportable transaction if the taxpayer's Federal income tax liability is affected (or in the case of a partnership or an S corporation, if a partner's or shareholder's Federal income tax liability is reasonably expected to be affected) by the transaction even if the taxpayer is not a direct party to the transaction (*e.g.,* the taxpayer participates as a partner in a partnership, as a shareholder in an S corporation, or through a controlled entity). Moreover, a taxpayer will have indirectly participated in a reportable transaction if the taxpayer knows or has reason to know that the tax benefits claimed from the taxpayer's transaction are derived from a reportable transaction. * * *

(2) *Example of indirect participation.* Notice 95–53 (1995–2 C.B. 334) (see § 601.601(d)(2) of this chapter), describes a lease stripping transaction in which one party (the transferor) assigns the right to receive future payments under a lease of tangible property and receives consideration which the transferor treats as current income. The transferor later transfers the property subject to the lease in a transaction intended to qualify as a substituted basis transaction, for example, a transaction described in section 351. In return, the transferor receives stock (with low value and high basis) from the transferee corporation. The transferee corporation claims the deductions associated with the high basis property subject to the lease. The transferor and transferee corporation have directly participated in the listed transaction. If the transferor subsequently transfers the high basis/low value stock to a taxpayer in another transaction intended to qualify as a substituted basis transaction and the taxpayer uses the stock to generate a loss, and if the taxpayer knows or has reason to know that the tax loss claimed was derived from the lease stripping transaction, then the taxpayer is indirectly participating in a reportable transaction. Accordingly, the taxpayer must disclose the reportable transaction and the manner of the taxpayer's indirect participation in the reportable transaction under the rules of this section.

(3) *Definition of taxpayer.* For purposes of paragraphs (b)(3) and (4) of this section, the term *taxpayer* means a corporation required to file a return under section 11, 594, 801, or 831. For all other purposes of this section, the term *taxpayer* also includes an individual, trust, partnership, or S corporation.

(b) *Definition of reportable transaction*—(1) *In general.* A reportable transaction is either a transaction that is described in paragraph (b)(2) of this section, or is a transaction that is described in paragraph (b)(3) of this section and that meets the projected tax effect test in paragraph (b)(4) of this section. * * *

(i) *Definition of substantially similar.* For purposes of this section, the term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax benefits and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion concluding that the tax benefits from the taxpayer's transaction are allowable is not relevant to the determination of whether the taxpayer's transaction is the same as or substantially similar to a listed transaction. Further, the term

substantially similar must be broadly construed in favor of disclosure.

(ii) *Examples.* The following examples illustrate situations where a transaction is the same as or substantially similar to a listed transaction:

Example 1. Notice 2000–44 (2000–2 C.B. 255) (see § 601.601(d)(2) of this chapter), sets forth a listed transaction involving offsetting options transferred to a partnership where the taxpayer claims basis in the partnership for the cost of the purchased options but does not reduce basis under section 752 as a result of the partnership's assumption of the taxpayer's obligation with respect to the options. Transactions using short sales, futures, derivatives or any other type of offsetting obligations to inflate basis in a partnership interest would be the same as or substantially similar to the transaction described in Notice 2000–44. Moreover, use of the inflated basis in the partnership interest to diminish gain that would otherwise be recognized on the transfer of a partnership asset would also be the same as or substantially similar to the transaction described in Notice 2000–44.

Example 2. Notice 2001–16 (2001–1 C.B. 730) (see § 601.601(d)(2) of this chapter), sets forth a listed transaction involving a seller (X) who desires to sell stock of a corporation (T), an intermediary corporation (M), and a buyer (Y) who desires to purchase the assets (and not the stock) of T. M agrees to facilitate the sale to prevent the recognition of the gain that T would otherwise report. Notice 2001–16 describes M as a member of a consolidated group that has a loss within the group or as a party not subject to tax. Transactions utilizing different intermediaries to prevent the recognition of gain would be the same as or substantially similar to the transaction described in Notice 2001–16. An example is a transaction in which M is a corporation that does not file a consolidated return but which buys T stock, liquidates T, sells assets of T to Y, and offsets the gain recognized on the sale of those assets with currently generated losses.

* * * * *

(5) * * *

Example 3. * * * However, E does reasonably determine that the terms of the leases are consistent with customary commercial form in the leasing industry, and that there is a generally accepted understanding that the combination of Federal income tax consequences it is claiming with respect to the leases are allowable under the Internal Revenue Code for substantially similar transactions. * * *

(c) * * *

(1) * * *

(iii) A brief description of the principal elements of the transaction that give rise to the expected tax benefits, including the manner of the taxpayer's direct or indirect participation in the transaction.

* * * * *

(v) An identification of each taxable year (including prior taxable years) for which the transaction is expected to have the effect of reducing the Federal income tax liability of the taxpayer, or of any partner or shareholder of the taxpayer, and an estimate of the amount by which the transaction is expected to reduce the Federal income tax liability of the taxpayer, or of any partner or shareholder of the taxpayer, for each such taxable year.

* * * * *

(d) *Time of providing disclosure*—(1) *In general.* The disclosure statement for a reportable transaction must be attached to the taxpayer's Federal income tax return for each taxable year for which the taxpayer's Federal income tax liability is affected by the taxpayer's participation in the transaction. In the case of a taxpayer that is a partnership or an S corporation, the disclosure statement for a listed transaction must be attached to the taxpayer's Federal income tax return for each taxable year ending with or within the taxable year of any partner or shareholder whose income tax liability is affected or is reasonably expected to be affected by the partnership's or the S corporation's participation in the transaction. In addition, at the same time that any disclosure statement is first attached to the taxpayer's Federal income tax return, the taxpayer must file a copy of that disclosure statement with the Office of Tax Shelter Analysis (OTSA) at: Internal Revenue Service LM:PFTG:OTSA, Large & Mid-Size Business Division, 1111 Constitution Ave., NW., Washington, DC 20224. Regardless of whether the taxpayer plans to disclose the transaction under other published guidance, for example, Rev. Proc. 94–69 (1994–2 C.B. 804) (see § 601.601(d)(2) of this chapter), the taxpayer also must disclose the transaction in the time and manner provided for under the provisions of this section. If a transaction becomes a reportable transaction (*e.g.,* the transaction subsequently becomes one identified in published guidance as a listed transaction described in (b)(2) of this section, or there is a change in facts affecting the expected Federal income tax effect of the transaction) on or after the date the taxpayer has filed the return for the first taxable year for which the transaction affected the taxpayer's or a partner's or a shareholder's Federal income tax liability, the disclosure statement must be filed as an attachment to the taxpayer's Federal income tax return next filed after the date the transaction becomes a reportable transaction (whether or not the transaction affects the taxpayer's or any partner's or shareholder's Federal income tax liability for that year). If a disclosure statement is required as an attachment to a Federal income tax return that is filed after June 14, 2002, but on or before 180 days after June 14, 2002, the taxpayer must either attach the disclosure statement to the return, or file the disclosure statement as an amendment to the return no later than 180 days after June 14, 2002.

* * * * *

(g) *Effective date.* This section applies to Federal income tax returns filed after February 28, 2000. However, paragraphs (a)(1), (a)(2), (a)(3), (b)(1), (b)(4)(i), (b)(5) *Example 3*, (c)(1)(iii), (c)(1)(v), (c)(2) *Example*, (d)(1), and (e) of this section apply to any transaction entered into on or after January 1, 2001, unless such transaction is reported on a tax return of the taxpayer that is filed on or before June 14, 2002. Taxpayers may rely on the rules in paragraphs (a)(1), (a)(2), (a)(3), (b)(1), (b)(4)(i),(b)(5) *Example 3*, (c)(1)(iii), (c)(1)(v), (c)(2) *Example*, (d)(1), and (e) of this section for Federal income tax returns filed after February 28, 2000. Otherwise, the rules that apply with respect to transactions entered into before January 1, 2001, and with respect to any transaction entered into on or after January 1, 2001, and reported on a tax return of the taxpayer that is filed on or before June 14, 2002, are contained in § 1.6011–4T in effect prior to June 14, 2002 (see 26 CFR part 1 revised as of April 1, 2002).

Par. 3. In § 1.6031(a)–1, paragraph(a)(1) is amended by adding a sentence to the end of the paragraph to read as follows:

§ 1.6031(a)–1 Return of partnership income.

(a) * * *

(1) * * * For the rules requiring the disclosure of certain transactions, see § 1.6011–4T.

* * * * *

Par. 4. In § 1.6037–1, paragraph (c) is amended by adding a sentence to the end of the paragraph to read as follows:

§ 1.6037–1 Return of electing small business corporation.

* * * * *

(c) * * * For the rules requiring the disclosure of certain transactions, see § 1.6011–4T.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority citation for part 301 continues to read in part as follows:

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

Par. 6. Section 301.6111–2T is amended as follows:

1. Paragraph (a)(3) is amended by adding four sentences to the end of the paragraph.

2. The paragraph heading for (h) is revised and the entire text after the second sentence is removed and four new sentences are added in their place.

The revision and additions read as follows:

§ 301.6111–2T Confidential corporate tax shelters (Temporary).

(a) * * *

(3) * * * For purposes of this section, the term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax benefits and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion concluding that the tax benefits from the taxpayer's transaction are allowable is not relevant to the determination of whether the taxpayer's transaction is the same as or substantially similar to a listed transaction. Further, the term *substantially similar* must be broadly construed in favor of disclosure. For examples, see § 1.6011–4T(b)(1)(ii) of this chapter.

* * * * *

(h) *Effective dates.* * * * However, paragraph (a)(3) of this section applies to confidential corporate tax shelters in which any interests are offered for sale after June 14, 2002. The rule in paragraph (a)(3) of this section may be relied upon for confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000. Otherwise, the rules that apply to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000, and on or before June 14, 2002 are contained in this § 301.6111–2T in effect prior to June 14, 2002. (See 26 CFR part 301 revised as of April 1, 2002).

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: June 11, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 02–15321 Filed 6–14–02; 11:32 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 1, 3, 26, 81, 89, 110, 117, 120, 127, 128, 148, 151, 153, 154, 155, 156, 157, 158, 159, 160, 164, and 165

[USCG–2002–12471]

RIN 2115–AG44

Navigation and Navigable Waters—Technical Amendments, Organizational Changes, Miscellaneous Editorial Changes and Conforming Amendments

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule makes editorial and technical changes throughout title 33 of the Code of Federal Regulations (CFR) to update the title before it is recodified on July 1, 2002. It updates organization names and addresses, and makes conforming amendments and technical corrections. This rule will have no substantive effect on the regulated public.

DATES: This final rule is effective June 28, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, (USCG–2002–12471), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, 20590–0001, 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 Robert Spears, Project Manager, Standards Evaluation and Development Division (G–MSR–2), Coast Guard, at 202–267–1099. If you have questions on viewing, or submitting material to, the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

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. This rule consists only of corrections and editorial and conforming amendments to title 33 of the Code of Federal Regulations (CFR). These changes will have no substantive effect on the public; therefore, it is not necessary for us to publish an NPRM and providing an opportunity for public comment. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Discussion of the Rule

Each year title 33 of the Code of Federal Regulations is recodified on July 1. This rule makes editorial changes throughout the title, corrects organization names and addresses, and makes other technical and editorial corrections to be included in the recodification. It does not change any substantive requirements of existing regulations. Some editorial changes are discussed individually in the following three paragraphs.

Sections 3.25–10 and 3.25–20. These sections are amended to reflect an administrative change in the boundaries between the two marine inspection and captain of the port zones defined in these sections.

Sections 110.236 and 110.237. These sections are amended to convert geographic coordinates from Old Hawaiian Datum (OHD) to North American Datum 1983 (NAD83). Current charts reference NAD83 and NAD83 is used by the Global Positioning System (GPS).

Section 117.1041. This section is revised to reflect a name change in a bridge.

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. As this rule involves internal agency practices and procedures and non-substantive changes, it will not impose any costs on the public.

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, paragraphs (34)(a) and (b) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. These regulations are editorial or procedural and concern internal agency functions and organization. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 1

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

33 CFR Part 3

Organization and functions (Government agencies).

33 CFR Part 26

Communications equipment, Marine safety, Radio, Telephone, Vessels.

33 CFR Part 81

Navigation (water), Reporting and recordkeeping requirements, Treaties.

33 CFR Part 89

Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 110

Anchorage grounds.

33 CFR Part 117

Bridges.

33 CFR Part 120

Security, Passenger vessels, Reporting and recordkeeping requirements.

33 CFR Part 127

Fire prevention, Harbors, Natural gas, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 128

Harbors, Reporting and recordkeeping requirements, Security measures, Terrorism.

33 CFR Part 148

Administrative practice and procedure, Environmental protection, Harbors, Petroleum.

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 153

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 154

Fire prevention, Hazzardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 155

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 158

Administrative practice and procedure, Harbors, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 159

Sewage disposal, Vessels.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 164

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

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 1, 3, 26, 81, 89, 110, 117, 120, 127, 128, 148, 151 subparts B and D, 153, 154, 155, 156, 157, 158, 159, 160, 164, and 165 as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1, subpart 1.01, continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 401, 491, 525, 1321, 2716, and 2716a; 42 U.S.C. 9615; 49 U.S.C. 322; 49 CFR 1.45(b), 1.46; section 1.01–70 also issued under the authority of E.O. 12580, 3 CFR, 1987 Comp., p. 193; and sections 1.01–80 and 1.01–85 also issued under the authority of E.O. 12777, 3 CFR, 1991 Comp., p. 351.

§ 1.01–70 [Amended]

2. In § 1.01–70, in paragraph (b), remove the words ''Marine Safety and Environmental Protection'' and add, in their place, the words ''Marine Safety, Security and Environmental Protection''.

§ 1.01–80 [Amended]

3. In § 1.01–80, in paragraph (b), remove the words ''Marine Safety and Environmental Protection'' and add, in their place, the words ''Marine Safety, Security and Environmental Protection''.

4. The authority citation for part 1, subpart 1.05, continues to read as follows:

Authority: 5 U.S.C. 552, 553, App. 2; 14 U.S.C. 2, 631, 632, and 633; 33 U.S.C. 471, 499; 49 U.S.C. 101, 322; 49 CFR 1.4(b), 1.45(b), and 1.46.

§ 1.05–1 [Amended]

5. In § 1.05–1, in paragraph (g), remove the words ''Marine Safety and Environmental Protection'' and add, in their place, the words ''Marine Safety, Security and Environmental Protection''.

6. The authority citation for part 1, 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.

§ 1.07–15 [Amended]

7. In § 1.07–15, in paragraph (c), remove the word ''subpenas'' and add, in its place, the word ''subpoenas''.

§ 1.07–35 [Amended]

8. In § 1.07–35, in paragraph (c)(2), remove the word ''subpena'' and add, in its place, the word ''subpoena''.

§ 1.07–50 [Amended]

9. In § 1.07–50, remove the word ''subpena'' and add, in its place, the word ''subpoena''.

§ 1.07–60 [Amended]

10. In § 1.07–60, paragraph (b), remove the word ''and'' and add, in its place, the word ''an''.

PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

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

Authority: 14 U.S.C. 633; 49 CFR 1.45, 1.46.

12. In § 3.25–10, revise paragraph (b) as set forth below:

§ 3.25–10 Hampton Roads Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) The boundary of the Hampton Roads Marine Inspection Zone and Captain of the Port Zone starts at the intersection of the Maryland-Delaware boundary and the coast and proceeds along the Maryland-Delaware boundary to a point 75°30.0′ W. longitude; thence southerly to a point 75°30.0′ W. longitude on the Maryland-Virginia boundary, thence westerly along the Maryland-Virginia boundary as it proceeds across the Delmarva Peninsula, Pocomoke River, Tangier and Pocomoke Sounds, and Chesapeake Bay; thence northwesterly along the Maryland-Virginia boundary and the District of Columbia-Virginia boundary as those boundaries are formed along the southern bank of the Potomac River to the intersection of the Virginia-Maryland-West Virginia boundaries; thence southerly along the Virginia-West Virginia boundary and the Virginia-Kentucky boundary to the Tennessee boundary; thence eastward along the Virginia-Tennessee boundary to the Virginia-North Carolina boundary; thence eastward to the sea. The offshore boundary starts at the intersection of the Maryland-Delaware boundary and the coast and proceeds east to a point 38°28.0′ N. latitude, 70°11.0′ W. longitude; thence southeasterly on a line bearing 122°T to the outermost extent of the EEZ; thence southerly along the outermost extent of the EEZ to 36°33.0′ N. latitude, and thence westerly along 36°33.0′ N latitude to the coast at 75°52.0′ W. longitude.

13. In § 3.25–20, revise paragraph (b) as set forth below:

§ 3.25–20 Wilmington Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) The boundary of the Wilmington Marine Inspection Zone and Captain of the Port Zone starts at the sea at 36°33.0′ N. latitude, 75°52.0′ W. longitude, and proceeds westerly along the North Carolina-Virginia boundary to the Tennessee boundary; thence southwesterly along the North Carolina-Tennessee boundary to the Georgia boundary; thence easterly along the North Carolina-Georgia boundary to the South Carolina boundary; thence easterly along the South Carolina-North Carolina boundary to the sea. The offshore boundary of the Wilmington Captain of the Port Zone starts at the coast at 36°33.0′ N. latitude; thence proceeds easterly to the outermost extent of the EEZ; thence southerly along the outermost extent of the EEZ to a line bearing 122°T from the intersection of the South Carolina-North Carolina boundary and the sea to the outermost extent of the EEZ; thence westerly along a line bearing 122°T to the coast.

PART 26—VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE REGULATIONS

14. The authority citation for part 26 continues to read as follows:

Authority: 14 U.S.C. 2; 33 U.S.C. 1201–1208; 49 CFR 1.45(b), 1.46; Rule 1, International Regulations for the Prevention of Collisions at Sea.

§ 26.08 [Amended]

15. In § 26.08, in both paragraphs (a) and (c), remove the words ''Marine Safety and Environmental Protection'' and add, in their places, the words ''Marine Safety, Security and Environmental Protection''.

PART 81—72 COLREGS: IMPLEMENTING RULES

16. The authority citation for part 81 continues to read as follows:

Authority: 33 U.S.C. 1607; E.O. 11964; 49 CFR 1.46.

§ 81.18 [Amended]

17. In § 81.18, in paragraph (b), remove the words ''Marine Safety and Environmental Protection'' and add, in their place, the words ''Marine Safety, Security and Environmental Protection''.

PART 89—INLAND NAVIGATION RULES: IMPLEMENTING RULES

18. The authority citation for part 89 continues to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46(n)(14).

§ 89.18 [Amended]

19. In § 89.18, in paragraph (a), remove the words ''Marine Safety and Environmental Protection'' and add, in their place, the words ''Marine Safety, Security and Environmental Protection''.

PART 110—ANCHORAGE REGULATIONS

20. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

21. In § 110.236, revise paragraph (a) to read as follows:

§ 110.236 Pacific Ocean Off Barbers Point, Island of Oahu, Hawaii: Offshore pipeline terminal anchorages.

(a) *The anchorage grounds*—(1) *Anchorage A.* The waters within an area described as follows: A circle of 1,000 feet radius centered at latitude 21°17′43.6″ N., longitude 158°07′36.1″ W. (Datum NAD 83)

(2) *Nonanchorage area A.* The waters extending 300 feet on either side of a line bearing 059° from anchorage A to the shoreline at latitude 21°18′10.6″ N., longitude 158°06′47.1″ W. (Datum NAD 83)

(3) *Anchorage B.* The waters enclosed by a line beginning at latitude 21°16′20.1″ N., longitude 158°04′59.1″ W.; thence to latitude 21°15′52.5″ N., longitude 158°05′7″ W.; thence to latitude 21°15′59.7″ N., longitude 158°05′35.9″ W.; thence to latitude 21°16′27.4″ N., longitude 158°05′28″ W.; thence to the point of beginning. (Datum NAD 83)

(4) *Nonanchorage area B.* The waters extending 300 feet on either side of a line bearing 334.5° from anchorage B to the shoreline at latitude 21°17′39.1″ N., longitude 158°06′03.2″ W. (Datum NAD 83)

(5) *Anchorage C.* The waters enclosed by a line beginning at latitude 21°16′46.6″ N., longitude 158°04′29.1″ W.; thence to latitude 21°16′46.6″ N., longitude 158°04′02.1″ W.; thence to latitude 21°16′32.6″ N., longitude 158°04′02.1″ W.; thence to latitude 21°16′32.6″ N., longitude 158°04′29.1″ W.; thence to the point of beginning. (Datum NAD 83)

(6) *Nonanchorage area C.* The waters extending 300 feet on either side of a line bearing 306° from anchorage C to the shoreline at latitude 21°17′42.6″ N., longitude 158°05′57.9″ W. (Datum NAD 83)

(7) *Anchorage D.* The waters enclosed by a line beginning at latitude 21°17′48.6″ N., longitude 158°07′10.1″ W.; thence to latitude 21°17′44.6″ N., longitude 158°07′06.1″ W.; thence to latitude 21°17′37.6″ N., longitude 158°07′14.1″ W.; thence to latitude 21°17′41.6″ N., longitude 158°07′18.1″ W.; thence to the point of beginning. (Datum NAD 83)

* * * * *

§ 110.237 [Amended]

22. In § 110.237, paragraph (a), remove the words ″21°57′02″ N., longitude 159°41′33″ W. (Datum OHD)'' and in their place add the words ″21°56′50.7″ N., longitude 159°41′22.9″ W. (Datum NAD 83)''.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

23. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.1041 [Amended]

24. In § 117.1041, paragraph (a)(2), remove the words ''draws of the Fourteenth (Sixteenth) Avenue South'' and add, in their place, the words ''draw of the South Park'', and in paragraph (b)(4), remove the words ''Fourteenth Avenue South'' and add, in their place, the words ''South Park highway''.

PART 120—SECURITY OF PASSENGER VESSELS

25. The authority citation for part 120 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§ 120.309 [Amended]

26. In § 120.309, remove the words ''Marine Safety and Environmental Protection'' and add, in their place, the words ''Marine Safety, Security and Environmental Protection''.

PART 127—WATERFRONT FACILITIES HANDLING LIQUFIED NATURAL GAS AND LIQUIFIED HAZARDOUS GAS

27. The authority citation for part 127 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§ 127.015 [Amended]

28. In § 127.015, in both paragraphs (c)(1) and (d), remove the words ''Marine Safety and Environmental Protection'' and add, in their places, the words ''Marine Safety, Security and Environmental Protection''.

PART 128—SECURITY OF PASSENGER TERMINALS

29. The authority citation for part 128 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§ 128.120 [Amended]

30. In § 128.120(a), remove ''(G–MES)'' and add, in its place, ''(G–MSE)''.

PART 148—GENERAL

31. The authority citation for part 148 continues to read as follows:

Authority: Secs. 5(a), 5(b), Pub. L. 93–627, 88 Stat. 2131 (33 U.S.C. 1504(a), (b)); 49 CFR 1.46(s).

§ 148.211 [Amended]

32. In § 148.211, remove the words ''Marine Safety and Environmental Protection'' and add, in their place, the words ''Marine Safety, Security and Environmental Protection''.

§ 148.217 [Amended]

33. In § 148.217, in paragraph (a), remove the words ''Marine Safety and Environmental Protection'' and add, in their place, the words ''Marine Safety, Security and Environmental Protection''.

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

* * * * *

Subpart B—Transportation of Municipal and Commercial Waste

34. The authority citation for part 151 subpart B continues to read as follows:

Authority: 33 U.S.C. 2602; 49 CFR 1.46.

§ 151.1021 [Amended]

35. In § 151.1021, in both paragraphs (b)(1) and (c), remove the words ''Marine Safety and Environmental Protection'' and add, in their places, the words ''Marine Safety, Security and Environmental Protection''.

Subpart D—Ballast Water Management for Control of Nonindigenous Species in Waters of the United States

36. The authority citation for part 151 subpart D continues to read as follows:

Authority: 16 U.S.C. 4711; 49 CFR 1.46.

§ 151.2041 [Amended]

37. In § 151.2041, in paragraph (a), remove the words ''Marine Safety and Environmental Protection'' and add, in their place, the words ''Marine Safety,

Security and Environmental Protection''.

PART 153—CONTROL OF POLLUTION BY OIL AND HAZARDOUS SUBSTANCES, DISCHARGE REMOVAL

38. The authority citation for part 153 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 1321; 42 U.S.C. 9615; E.O. 12580, 3 CFR, 1987 Comp. p. 193; E.O. 12777, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.45 and 1.46.

§ 153.103 [Amended]

39. In § 153.103, in paragraph (d), remove the words ''Marine Safety and Environmental Protection'' and add, in their place, the words ''Marine Safety, Security and Environmental Protection''.

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

40. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

§ 154.108 [Amended]

41. In § 154.108, in both paragraphs (a) and (d), remove the words ''Marine Safety and Environmental Protection'' and in their places add the words ''Marine Safety, Security and Environmental Protection''.

§ 154.822 [Amended]

42. In § 154.822(c), replace the words, ''12.7 millimeters (1½ in.)'' with the words, ''12.7 millimeters (½ in.)''.

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

43. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715, 3719; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46; 1.46(iii). Sections 155.110–155.130, 155.350–155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110–155.1150 also issued under 33 U.S.C. 2735.

§ 155.1065 [Amended]

44. In § 155.1065, in paragraph (h), remove the words ''Marine Safety and Environmental Protection'' and add, in their place, the words ''Marine Safety, Security and Environmental Protection''.

§ 155.1070 [Amended]

45. In § 155.1070, in paragraph (f), remove the words ''Marine Safety and Environmental Protection'' and add, in their place, the words ''Marine Safety, Security and Environmental Protection''.

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

46. The authority citation for part 156 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C) and (D); 46 U.S.C. 3703a. Subparts B and C are also issued under 46 U.S.C. 3715.

§ 156.110 [Amended]

47. In § 156.110, in both paragraphs (a) and (d), remove the words ''Marine Safety and Environmental Protection'' and in their places add the words ''Marine Safety, Security and Environmental Protection''.

§ 156.210 [Amended]

48. In § 156.210, in paragraph (a)(2), remove the semicolon and word ''and'' at the end of the paragraph, and add in their place '';'', and in paragraph (a)(3), remove the word ''chapter'' and the period at the end of the paragraph, and add in their place the words ''chapter; and''.

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

49. The authority citation for part 157 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703, 3703a (note); 49 CFR 1.46. Subparts G, H, and I are also issued under section 4115(b), Pub. L. 101–380, 104 Stat. 520; Pub. L. 104–55, 109 Stat. 546.

§ 157.06 [Amended]

50. In § 157.06, in the first, third, and fourth sentences of paragraph (c), and in paragraph (d), remove the words ''Marine Safety and Environmental Protection'' and in their places add the words ''Marine Safety, Security and Environmental Protection''.

§ 157.306 [Amended]

51. In § 157.306, in paragraph (a), remove the words ''Marine Safety and Environmental Protection'' and in their places add the words ''Marine Safety, Security and Environmental Protection''.

PART 158—RECEPTION FACILITIES FOR OIL, NOXIOUS LIQUID SUBSTANCES, AND GARBAGE

52. The authority citation for part 158 continues to read as follows:

Authority: 33 U.S.C. 1903(b); 49 CFR 1.46.

§ 158.190 [Amended]

53. In § 158.190, in both paragraphs (c)(1) and (d), remove the words ''Marine Safety and Environmental Protection'' and in their places add the words ''Marine Safety, Security and Environmental Protection''.

PART 159—MARINE SANITATION DEVICES

54. The authority citation for part 159 continues to read as follows:

Authority: Sec. 312(b)(1), 86 Stat. 871 (33 U.S.C. 1322(b)(1)); 49 CFR 1.45(b) and 1.46(l) and (m).

§ 159.121 [Amended]

55. In § 159.121, in paragraph (d), replace the word ''miligrams'' with the word ''milligrams''.

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

56. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 49 CFR 1.46. Subpart D is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

§ 160.7 [Amended]

57. In § 160.7, in the first, third, fifth, sixth, and seventh sentences of paragraph (c), remove the words ''Marine Safety and Environmental Protection'' and in their places add the words ''Marine Safety, Security and Environmental Protection''.

PART 164—NAVIGATION SAFETY REGULATIONS

58. The authority citation for part 164 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

§ 164.03 [Amended]

59. In § 164.03(a), replace ''(G–MOV)'' with ''(G–MWV)''.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

60. The authority citation for part 165 is revised 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, and 160.5; 49 CFR 1.46.

Dated: June 11, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02–15229 Filed 6–17–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Huntington–02–007]

RIN 2115–AA97

Safety Zone; Ohio River Miles 269.0 to 270.0, Gallipolis, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the waters of the Ohio River beginning at mile 269.0 and ending at mile 270.0, extending the entire width of the river. This safety zone is needed to protect spectators and vessels from the potential safety hazards associated with a fireworks display. Entry into this zone is prohibited, unless specifically authorized by the Captain of the Port, Huntington or his designated representative.

DATES: This rule is effective from 10 p.m. to 10:45 p.m. on July 4, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Huntington–02–007] and are available for inspection or copying at Marine Safety Office Huntington, 1415 6th Avenue, Huntington, West Virginia, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer, Rick Leffler, Marine Safety Office Huntington, Marine Event Coordinator at (304) 529–5524.

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, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Information was made available to the Coast Guard in insufficient time to publish a NPRM or for publication in the **Federal Register** 30 days prior to the event. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect vessels and mariners from the hazards associated with a fireworks display.

Background and Purpose

The Captain of the Port Huntington, is establishing a safety zone between miles 269.0 and 270.0 of the Ohio River, extending the entire width of the river. This safety zone is needed to protect spectators and vessels from the potential safety hazards associated with a fireworks display. All vessels are prohibited from transiting within this safety zone unless authorized by the Captain of the Port, Huntington or his designated representative.

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 proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This regulation will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

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 portions of the Ohio River from miles 269.0 to 270.0, from 10 p.m. to 10:45 p.m. on July 4, 2002. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only a short period of time and mariners will be notified in advance of the zone through broadcast notice to mariners.

If you are a small business entity and are significantly affected by this regulation please contact Chief Petty Officer Rick Leffler, Marine Safety Office Huntington at (304) 529–5524.

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 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 so 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(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T08–056 is added to read as follows:

§ 165.T08–056 Safety Zone; Ohio River Miles 269.0 to 270.0, Gallipolis, Ohio.

(a) *Location.* The following area is a safety zone: the waters of the Ohio River from miles 269.0 to 270.0, extending the entire width of the river.

(b) *Effective date.* This section is effective from 10 p.m. to 10:45 p.m. on July 4, 2002.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of persons and vessels into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Huntington or his designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Huntington, or his designated representative. They may be contacted via VHF–FM Channel 13 or 16 or via telephone at (304) 529–5524.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Huntington and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: June 7, 2002.

L.D. Stroh,

Commander, U.S. Coast Guard, Captain of the Port Huntington.

[FR Doc. 02–15226 Filed 6–17–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Huntington–02–006]

RIN 2115–AA97

Safety Zone; Ohio River Miles 252.0 to 253.0, Middleport, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the waters of the Ohio River beginning at mile 252.0 and ending at mile 253.0, extending the entire width of the river. This safety zone is needed to protect spectators and vessels from the potential safety hazards associated with a fireworks display. Entry into this zone is prohibited, unless specifically authorized by the Captain of the Port, Huntington or his designated representative.

DATES: This rule is effective from 9:30 p.m. to 10:30 p.m. on July 4, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Huntington–02–006] and are available for inspection or copying at Marine Safety Office Huntington, 1415 6th Avenue, Huntington, West Virginia, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer, Rick Leffler, Marine Safety Office Huntington, Marine Event Coordinator at (304) 529–5524.

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, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Information was made available to the Coast Guard in insufficient time to publish an NPRM or for publication in the **Federal Register** 30 days prior to the event. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect vessels and mariners from the hazards associated with a fireworks display.

Background and Purpose

The Captain of the Port Huntington is establishing a safety zone between miles

252.0 and 253.0 of the Ohio River, extending the entire width of the river. This safety zone is needed to protect spectators and vessels from the potential safety hazards associated with a fireworks display. All vessels and persons are prohibited from transiting within this safety zone unless authorized by the Captain of the Port, Huntington or his designated representative.

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 proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This regulation will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

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 portions of the Ohio River from miles 252.0 to 253.0, from 9:30 p.m. to 10:30 p.m. on July 4, 2002. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only a short period of time and mariners will be notified in advance of the zone through broadcast notice to mariners.

If you are a small business entity and are significantly affected by this regulation please contact Chief Petty Officer Rick Leffler, Marine Safety Office Huntington at (304) 529–5524.

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 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 so 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

We have 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. A ''Categorical Exclusion Determination'' is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T08–055 is added to read as follows:

§ 165.T08–055 Safety Zone; Ohio River Miles 252.0 to 253.0, Middleport, Ohio.

(a) *Location.* The following area is a safety zone: the waters of the Ohio River from miles 252.0 to 253.0 extending the entire width of the river.

(b) *Effective date.* This section is effective from 9:30 p.m. to 10:30 p.m. on July 4, 2002.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of persons and vessels into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Huntington or his designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Huntington, or his designated representative. They may be contacted via VHF–FM Channel 13 or 16 or via telephone at (304) 529–5524.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Huntington and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: June 7, 2002.

L.D. Stroh,

Commander, U.S. Coast Guard, Captain of the Port Huntington.

[FR Doc. 02–15227 Filed 6–17–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–01–066]

RIN 2115–AE84

Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change of effective period.

SUMMARY: Commander, Fifth Coast Guard District is extending the effective period for the temporary final rules published earlier for the ''Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters'' to December 15, 2002, to ensure public safety and security and to ensure the uninterrupted flow of commerce.

DATES: Section 165.501(d)(14) added at 66 FR 53713, October 24, 2001, effective October 24, 2001, until June 15, 2002; sections 165.501(a)(13), (d)(15), and (d)(16), added at 66 FR 66754, December 27, 2001, effective December 11, 2001, until June 15, 2002, are extended in effect until December 15, 2002. Section 165.501(a)(1), suspended at 66 FR 66754, December 27, 2001, from December 11, 2001, until June 15, 2002, will continue to be suspended through December 15, 2002.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule or questions on viewing or submitting material to the docket, contact Lieutenant Junior Grade Monica Acosta, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3453.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Due to the terrorist attacks of September 2001, and continued warnings from national security and intelligence officials that future terrorist attacks are possible, there is an increased risk that subversive activity could be launched by vessels or persons against the United States. In September 2001, the Commander, Naval Station Norfolk requested vessel speed limits for certain vessels operating in the vicinity of Naval Station Norfolk to ensure the safety and security of naval vessels in that area.

On October 24, 2001, the Coast Guard published a temporary final rule entitled, ''Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters,'' in the **Federal Register** (66 FR 53712). The temporary rule added vessel speed limits for certain vessels operating in the vicinity of Naval Station Norfolk, to the existing regulated navigation area for the Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters.

We are extending the effective period of the temporary final rule so that we can complete a rulemaking to permanently change the regulated navigation area at the entrance to Chesapeake Bay and Hampton Roads, VA. Extending the effective date of the temporary rule until December 15, 2002, should provide us enough time to complete the rulemaking.

Due to the increased awareness that future terrorist attacks are possible, the Coast Guard, as lead federal agency for maritime homeland security, has determined that the District Commander must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. A regulated navigation area is a tool available to the Coast Guard that may be used to control vessel traffic by specifying times of vessel entry, movement, or departure to, from, within, or through ports, harbors, or other waters.

On December 27, 2001, we published a temporary final rule entitled, ''Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters,'' in the **Federal Register** (66 FR 66753). The temporary rule expanded the geographic definition of the Hampton Roads regulated navigation area to include the waters of the 12 nautical mile territorial sea off the Coast of Virginia and added new port security measures.

We are also extending the effective period of this temporary final rule so that we can complete a rulemaking to permanently change the regulated navigation area at the entrance to Chesapeake Bay and Hampton Roads, VA. Extending the effective date of the temporary rule until December 15, 2002, should provide us enough time to complete the rulemaking.

We did not publish a notice of proposed rulemaking (NPRM) for this rule and it is being made effective less than 30 days after publication in the **Federal Register**. When we promulgated these rules on October 24, 2001, and December 27, 2001, we intended to either allow them to expire on June 15, 2002, or to cancel them if we made permanent changes before this date. We are now preparing an NPRM to make permanent changes to the regulated navigation area. That rulemaking will follow the normal notice and comment procedures, and a final rule should be published before December 15, 2002. Continuing the temporary rule in effect while the permanent rulemaking is in progress will help to ensure the security of the Chesapeake Bay and the Port of Hampton Roads during that period. Therefore, the Coast Guard finds good cause under 5 U.S.C. 553(b)(B) and (d)(3) for why a notice of proposed rulemaking and opportunity for comment is not required and why this

rule will be made effective fewer than 30 days after publication in the **Federal Register**.

Regulatory Evaluation

This temporary 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).

This temporary final rule will affect only those vessels in excess of 300 GT that enter and depart the Port of Hampton Roads. The speed limit restrictions are only in effect for less than 4 miles, and typical vessel speed in 10 knots, so the actual delay for each vessel will be less than 6 minutes in each direction. Therefore, the delay caused by the two-knot reduction in speed will be minimal. Furthermore, we have received no comments to date from affected parties. In sum, we expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this temporary rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule was not preceded by a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. section 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities. If you believe that your business, organization, or governmental jurisdiction qualifies as a small entity and that this temporary rule will have a significant economic impact on it, please submit a comment (see **FOR FURTHER INFORMATION CONTACT**) explaining why you believe it qualifies and in what way and to what degree this temporary rule will economically affect it.

Assistance for Small Entities

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 temporary rule does not provide for a 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 temporary rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates

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 temporary rule will not result in such expenditure, we do discuss the effects of this temporary rule elsewhere in this preamble.

Taking of Private Property

This temporary 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 temporary 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 temporary rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This temporary 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 temporary 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. 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.

Energy Effects

We have analyzed this temporary 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 temporary final rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this temporary final rule is categorically excluded from further environmental documentation. This temporary rule seeks to continue to modify a well-established regulated navigation area, and will be in effect for another 6 months. A ''Categorical Exclusion Determination'' is available in the

docket for inspection or copying where indicated under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.501 [Amended]

2. In § 165.501, paragraph (a)(1), which was suspended at 66 FR 66754, December 27, 2001, from December 11, 2001, until June 15, 2002, will continue to be suspended through December 15, 2002; paragraph (d)(14), which was added at 66 FR 53713, October 24, 2001, effective October 24, 2001, until June 15, 2002; and paragraphs (a)(13), (d)(15), and (d)(15), added at 66 FR 66754, December 27, 2001, from December 11, 2001, until June 15, 2002, are all extended in effect until December 15, 2002.

Dated: June 12, 2002.

T.C. Farr,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 02–15335 Filed 6–13–02; 5:08 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–02–060]

RIN 2115–AA97

Security Zones; Ports of Jacksonville and Canaveral, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the effective period of the temporary final rule that established temporary 100 yard moving and fixed security zones around certain vessels within the Ports of Jacksonville and Canaveral. The security zones will prohibit vessels from coming within 100 yards of all tank vessels, cruise ships, and military pre-positioned ships when these vessels enter, depart or moor within the Ports of Jacksonville and Canaveral. These security zones are needed to ensure public safety and prevent sabotage or terrorist acts against vessels in the COTP Jacksonville area of responsibility. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, Jacksonville, Florida or his designated representative.

DATES: This rule is effective from midnight (12 a.m.) June 16, 2002 through 12 (noon) November 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 [CGD02–02–060] and are available for inspection or copying at Marine Safety Office Jacksonville, 7820 Arlington Expressway, Suite 400, Jacksonville, FL 32211, between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Drew Casey, Coast Guard Marine Safety Office Jacksonville, at 904–232–3610, ext. 105.

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 a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to the public interest since the Captain of the Port of Jacksonville has determined that immediate action is needed to protect the public, ports and waterways of the United States.

For the same reasons, 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**.

Background and Purpose

On September 12, 2001, one day after the September 11 terrorist attacks, the Coast Guard established a temporary rule establishing security zones around tank vessels, passenger vessels, and military pre-positioned ships until October 3, 2001 (published on September 26, 2001, 66 FR 49104). Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. As a result, on October 17, 2001, the Coast Guard published a second temporary rule in the **Federal Register** continuing these zones through 11:59 p.m. June 15, 2002 (66 FR 52689). This third temporary rule will continue the zones through noon on November 15, 2002 so the Coast Guard can publish a notice of proposed rulemaking to receive public comment on making this temporary rule final.

This temporary rule creates 100-yard security zones around all tank vessels, cruise ships, and military pre-positioned ships when these vessels enter, depart or moor within the Ports of Jacksonville and Canaveral. No person or vessel may enter these zones without the permission of the Captain of the Port of Jacksonville. These moving security zones are activated when the subject vessels pass the St. Johns River Sea Buoy, at approximate position 30° 23″ 35′ N, 81° 19″ 08′ West, when entering the Port of Jacksonville, or pass Port Canaveral Channel Entrance Buoys # 3 or # 4, at respective approximate positions 28° 22.7 N, 80° 31.8 W, and 28° 23.7 N, 80° 29.2 W, when entering Port Canaveral. Temporary fixed security zones are established 100 yards around all tank vessels, cruise ships, and military pre-positioned ships docked in the Ports of Jacksonville and Canaveral, Florida.

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) because the impact of this rule on commercial and recreational vessel navigation is minimal because most vessels will be able to transit around these zone and the Captain of the Port may permit entry into the zone on a case by case basis.

Small Entities

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

because small entities may transit around these zones and may be allowed to enter on a case-by-case basis with the authorization of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implication 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. Alhough 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.

Environmental

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation.

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 relationships 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 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), Reports and recordkeeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary section 165.T–07–060 is added to read as follows:

§ 165.T–07–060 Security Zones; Ports of Jacksonville and Canaveral, Florida.

(a) *Regulated area.* Temporary moving security zones are established 100 yards around all tank vessels, cruise ships, and military pre-positioned ships during transits entering or departing the ports of Jacksonville and Canaveral, Florida. These moving security zones are activated when the subject vessels pass the St. Johns River Sea Buoy, at approximate position 30°23″ 35′ N, 81°19″ 08′ West, when entering the Port of Jacksonville, or pass Port Canaveral Channel Entrance Buoys # 3 or # 4, at respective approximate positions 28°22.7 N, 80°31.8 W, and 28°23.7 N, 80°00.2 W, when entering Port Canaveral. Temporary fixed security zones are established 100 yards around all tank vessels, cruise ships, and military pre-positioned ships docked in the Ports of Jacksonville and Canaveral, Florida.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into these zones is prohibited except as authorized by the Captain of the Port, or a Coast Guard commissioned, warrant, or petty officer designated by him. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Definition.* As used in this section: Cruise ship means a passenger vessel, except for a ferry, greater than 100 feet in length that is authorized to carry more than 12 passengers for hire.

(d) *Dates.* This rule becomes effective at midnight (12:00 a.m.) on June 16, 2002 and will terminate at 12 (noon) on November 15, 2002.

Dated: June 11, 2002.

M.M. Rosecrans,

Captain, U. S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 02–15357 Filed 6–17–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach 01–013]

RIN 2115–AA97

Security Zone; Port Hueneme Harbor, Ventura County, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is revising the effective period for a temporary security zone covering all waters within Port Hueneme Harbor in Ventura County, CA. This security zone is needed for national security reasons to protect the Naval Base Ventura County and the commercial port from potential subversive acts. Entry into this zone is prohibited unless specifically authorized by the Capitan of the Port Los Angeles-Long Beach, the Commanding Officer, Naval Base Ventura County, or their designated representatives.

DATES: The amendment to § 165.T11–060 (c) in this rule is effective June 14, 2002. Section 165.T11–060, added at 67 FR 1099, January 9, 2002, effective from 12:01 a.m. PST on December 21, 2001, to 11:59 p.m. PDT on June 15, 2002, as amended by this rule is extended in effect through June 15, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Los Angeles-Long Beach 01–013 and are available for inspection or copying at Coast Guard Marine Safety Office Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Chief of Waterways Management, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 9, 2002, we published a temporary final rule for Port Hueneme Harbor entitled ''Security Zone; Port Hueneme Harbor, Ventura County, California'' in the **Federal Register** (67 FR 1097) under § 165.T11–060. The effective period for this rule was from December 21, 2001, through June 15, 2002.

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. Due to the terrorist attacks on September 11, 2001 and the warnings given by national security and intelligence officials, there is an increased risk that further subversive or terrorist activity may be launched against the United States. A heightened level of security has been established around naval facilities. The original TFR was urgently required to prevent possible terrorist strikes against the United States and more specifically the people, waterways, and properties in Port Hueneme Harbor and the Naval Base Ventura County. It was anticipated that we would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, propose regulations responsive to existing conditions. We have determined the need for continued security regulations exists.

The Coast Guard has determined that designation of a restricted area by the Army Corps of Engineers (ACOE) under 33 CFR 334 is a more appropriate regulation in this case. A formal request has been submitted by the U.S. Navy to ACOE in order to begin public notice. The ACOE will utilize the extended effective period of this TFR to engage in notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment. This TFR preserves the status quo within the harbor while permanent rules are developed.

For the reasons stated in the paragraphs above under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On September 11, 2001, terrorists launched attacks on commercial and public structures—the World Trade Center in New York and the Pentagon in Arlington, Virginia—killing large numbers of people and damaging properties of national significance. There is an increased risk that further subversive or terrorist activity may be launched against the United States based on warnings given by national security and intelligence officials. The Federal Bureau of Investigation (FBI) has issued warnings on October 11, 2001 and February 11, 2002 concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan have made it prudent for important facilities and vessels to be on a higher state of alert because Osama Bin Ladin and his Al Qaeda organization, and other similar organizations, have publicly declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

These heightened security concerns, together with the catastrophic impact that a terrorist attack against a Naval Facility would have to the public interest, makes these security zones prudent on the navigable waterways of the United States. To mitigate the risk of terrorist actions, the Coast Guard has increased safety and security measures on the navigable waterways of U.S. ports and waterways as further attacks may be launched from vessels within the area of Port Hueneme Harbor and the Naval Base Ventura County.

In response to these terrorist acts, to prevent similar occurrences, and to protect the Naval Facilities at Port Hueneme Harbor and the Naval Base Ventura County, the Coast Guard will extend the period of this security zone in all waters within Port Hueneme Harbor. This security zone is necessary to prevent damage or injury to any vessel or waterfront facility, and to safeguard ports, harbors, or waters of the United States in Port Hueneme Harbor, Ventura County CA.

As of today, the need for a security zone in Port Hueneme Harbor still exists. This temporary final rule will extend the Port Hueneme security zone issued December 21, 2001 to June 15, 2003. This will allow the Army Corps of Engineers to utilize the extended effective period of this TFR to engage in notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment. This revision preserves the status quo within the Port Hueneme Harbor while permanent rules are developed.

Discussion of Rule

This regulation that is extending the current security zone, prohibits all vessels from entering Port Hueneme Harbor, beyond the COLREGS demarcation line set forth in Subpart 80.1120 of Part 80 of Title 33 of the Code of Federal Regulations, without first filing a proper Advance Notification of Arrival as required by part 160 of title 33 of the Code of Federal Regulations as well as obtaining clearance from Commanding Officer, Naval Base Ventura County ''Control 1''.

This security zone is established pursuant to the authority of the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations. Vessels or persons

violating this section are subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel, a monetary penalty of not more than $10,000, and imprisonment for not more than 10 years.

This rule will be enforced by the Captain of the Port Los Angeles-Long Beach, who may also enlist the aid and cooperation of any Federal, State, county, municipal, and private agencies to assist in the enforcement of this rule. Commanding Officer, Naval Base Ventura County ''Control 1'' will control vessel traffic entering Port Hueneme Harbor.

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) because this zone will encompass a small portion of the waterway.

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.

For the same reasons stated in the section above, 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 process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are establishing a security 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), Reports and recordkeeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. In temporary § 165.T11–060, revise paragraph (c) to read as follows:

§ 165.T11–060 Security Zone; Port Hueneme Harbor, Ventura County, California.

* * * * *

(c) *Effective period.* This section is effective from 12:01 a.m. PDT on December 21, 2001, until 11:59 p.m. PDT on June 15, 2003.

* * * * *

Dated: June 11, 2002.

J.M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 02–15386 Filed 6–17–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 19 and 27

[FRL–7231–7]

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: Environmental Protection Agency (EPA)

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (''EPA'') is taking direct final action on amending the final Civil Monetary Penalty Inflation Adjustment Rule as mandated by the Debt Collection Improvement Act of 1996 to adjust EPA's civil monetary penalties (''CMPs'') for inflation on a periodic basis. The Agency is required to review its penalties at least once every four years and to adjust them as necessary for inflation according to a specified formula. A complete version of Table 1 from the regulatory text, which lists all of the EPA's civil monetary penalty authorities, appears near the end of this document.

DATES: This rule is effective August 19, 2002 without further notice, unless EPA receives adverse comment by July 18, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Mail written comments to the Enforcement & Compliance Docket and Information Center (2201A), Docket Number EC–2001–008, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 2201A, Washington, DC 20460 (in triplicate, if possible). Please use a font size no smaller than 12. Written comments may be delivered in person to: Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC Comments may also be submitted electronically to *docket.oeca@epa.gov* or faxed to (202) 501–1011. Attach electronic comments as an ASCii (text) file, and avoid the use of special characters and any form of encryption. Be sure to include the docket number, EC–2001–008 on your document. Public comments, if any, may be reviewed at the Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC. Persons interested in reviewing this docket may do so by calling (202) 564–2614 or (202) 564–2119.

FOR FURTHER INFORMATION CONTACT: David Abdalla, Office of Regulatory Enforcement, Multimedia Enforcement Division, Mail Code 2248A, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 564–2413.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 note, (''DCIA''), each Federal agency is required to issue regulations adjusting for inflation the maximum civil monetary penalties that can be imposed pursuant to such agency's statutes. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to further the policy goals of the laws. The DCIA requires adjustments to be made at least once every four years following the initial adjustment. The EPA's initial adjustment to each CMP was published in the **Federal Register** on December 31, 1996, at 61 FR 69360 and became effective on January 30, 1997.

This direct final rule adjusts the amount for each type of CMP that EPA has jurisdiction to impose in accordance with these statutory requirements. It does so by revising the table contained in 40 CFR 19.4. The table identifies the statutes that provide EPA with CMP authority and sets out the inflation-adjusted maximum penalty that EPA may impose pursuant to each statutory provision. This direct final rule also revises the effective date provisions of 40 CFR 19.2 to make the penalty amounts set forth set forth in 40 CFR 19.4 apply to all violations under the applicable statutes and regulations which occur after August 19, 2002 without further notice unless we receive adverse comment.

The DCIA requires that the adjustment reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the adjustment and June of the calendar year in which the amount was last set or adjusted. The DCIA defines the Consumer Price Index as the Consumer Price Index for all urban consumers published by the Department of Labor (''CPI–U''). As the initial adjustment was made and published on December 31, 1996, the inflation adjustment for the CMPs was calculated by comparing the CPI–U for June 1996 (156.7) with the CPI–U for June 2001 (178), resulting in an inflation adjustment of 13.6 percent. In addition, the DCIA's rounding rules require that an increase be rounded to the nearest multiple of: $10 in the case of penalties less than or equal to $100; $100 in the case of penalties greater than $100 but less than or equal to $1,000; $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and $25,000 in the case of penalties greater than $200,000.

The amount of each CMP was multiplied by 13.6 percent (the inflation adjustment) and the resulting increase amount was rounded up or down according to the rounding requirements of the statute. The increase amount is rounded using a rounding rule based on the amount of the increase. For example, for a CMP of $27,500, the increase of $3,740 would be rounded to the nearest multiple of $1000 resulting in a total increase of $4000. The table below shows the inflation-adjusted CMPs and includes only the CMPs as of the effective date of this rule. EPA intends to readjust these amounts in the year 2005 and every four years thereafter, assuming there are no further changes to the mandate imposed by the DCIA.

Administrative Requirements

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. This rule incorporates requirements specifically set forth in the DCIA requiring EPA to issue a regulation implementing inflation adjustments for all its civil penalty provisions. These technical changes, required by law, do not substantively alter the existing regulatory framework nor in any way

affect the terms under which civil penalties are assessed by EPA. In addition, EPA has made minor conforming changes to the regulations to reflect the effective date of the new rates prescribed by Congress which have no substantive effect.

The formula for the amount of the penalty adjustment is prescribed by Congress in the DCIA and these changes are not subject to the exercise of discretion by EPA. However the rounding requirement of the statute is subject to different interpretations and EPA has rounded based on the amount of the increase resulting from the CPI percentage calculation. This approach achieves the intent of the DCIA because a rounding rule based on the amount of the increase will result in increase amounts that more closely track the changes in the CPI and would steadily increase the amount of the CMPs over time in line with increases in the CPI. Calculations based on other interpretations of the rounding requirement could result in CMP adjustments that are either several times the CPI percentage or in no increase at all even with increases in the CPI.

In the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adjust EPA's civil monetary penalties for inflation if adverse comments are filed. This rule will be effective on August 19, 2002 without further notice unless we receive adverse comment by July 18, 2002. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to review by the Office of Management and Budget.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because the rule implements mandate(s) specifically and explicitly set forth by the Congress without the exercise of any policy discretion by EPA. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 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.'' As this direct final rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, Executive Order 13175 does not apply to this rule.

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This 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. Thus, Executive Order 13132 does not apply to this rule.

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small

entity is defined as (1) a small business; (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. This action will not have a significant impact on a substantial number of small entities for the following reasons: EPA is required by the DCIA to adjust civil monetary penalties for inflation. The formula for the amount of the penalty adjustment is prescribed by Congress and is not subject to the exercise of discretion by EPA. EPA's action implements this statutory mandate and does not substantively alter the existing regulatory framework. This rule does not affect mechanisms already in place, including statutory provisions and EPA policies, that address the special circumstances of small entities when assessing penalties in enforcement actions. EPA's media penalty policies generally take into account an entity's ''ability to pay'' in determining the amount of a penalty. In addition, entities may be affected by this rule only if the federal government finds them in violation and seeks monetary penalties. This would constitute a very small fraction of the universe of regulated facilities. Additionally, the final amount of any civil penalty assessed against a violator remains committed to the discretion of the Federal Judge or Administrative Law Judge hearing a particular case. Accordingly, although EPA cannot predict the precise impact on individual cases, the adjustment is likely to result in at most a relatively minor change to the actual penalties in cases affecting a small fraction of regulated entities. After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 13045, Protection of Children from Environmental health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. 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 rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. Because this action does not involve technical standards, EPA did not consider the use of any voluntary consensus standards under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note).

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) because it does not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency. 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). This action 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.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). For the reasons outlined above, however, this action will take effect August 19, 2002.

List of Subjects

40 CFR Part 19

Environmental protection, Administrative practice and procedure, Penalties.

40 CFR Part 27

Administrative practice and procedure, Assessments, False claims, False statements, Penalties.

Dated: May 31, 2002.

Christine Todd Whitman,

Administrator, Environmental Protection Agency.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

1. Revise part 19 to read as follows:

PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

Sec.

Authority: Pub. L. 101–410, 28 U.S.C. 2461 note; Pub. L. 104–134, 31 U.S.C. 3701 note.

§ 19.1 Applicability.

This part applies to each statutory provision under the laws administered by the Environmental Protection Agency concerning the maximum civil monetary penalty which may be assessed in either civil judicial or administrative proceedings.

§ 19.2 Effective date.

The increased penalty amounts set forth in this part apply to all violations under the applicable statutes and regulations which occur after August 19, 2002.

§ 19.3 [Reserved]

§ 19.4 Penalty adjustment and table.

The adjusted statutory penalty provisions and their maximum applicable amounts are set out in Table 1. The last column in the table provides the newly effective maximum penalty amounts.

TABLE 1. OF SECTION 19.4.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount (dollars)
7 U.S.C. 136l.(a)(1)	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—GENERAL—COMMERCIAL APPLICATORS, ETC.	6,200

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount (dollars)
7 U.S.C. 136l.(a)(2)	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—PRIVATE APPLICATORS—FIRST AND SUBSEQUENT OFFENSES OR VIOLATIONS.	630/1,300
15 U.S.C. 2615(a)	TOXIC SUBSTANCES CONTROL ACT CIVIL PENALTY	31,500
15 U.S.C. 2647(a)	ASBESTOS HAZARD EMERGENCY RESPONSE ACT CIVIL PENALTY.	6,200
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE CLAIM.	6,200
31 U.S.C. 3802(a)(2)	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE STATEMENT.	6,200
33 U.S.C. 1319(d)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY	31,500
33 U.S.C. 1319(g)(2)(A)	CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	12,000/31,500
33 U.S.C. 1319(g)(2)(B)	CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	12,000/157,500
33 U.S.C. 1321(b)(6)(B)(I)	CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(b)(3) & (j) PER VIOLATION AND MAXIMUM.	12,000/31,500
33 U.S.C. 1321(b)(6)(B)(ii)	CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(b)(3) & (j) PER VIOLATION AND MAXIMUM.	12,000/157,500
33 U.S.C. 1321(b)(7)(A)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION PER DAY OR PER BARREL OR UNIT.	31,500 or 1,300 per barrel or unit
33 U.S.C. 1321(b)(7)(B)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(c) & (e)(1)(B).	31,500
33 U.S.C. 1321(b)(7)(C)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(j).	31,500
33 U.S.C. 1321(b)(7)(D)	CLEAN WATER ACT VIOLATION/MINIMUM CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION OR PER BARREL/UNIT.	125,000 or 3,700 per barrel or unit
33 U.S.C. 1414b(d)	MARINE PROTECTION, RESEARCH & SANCTUARIES ACT VIOL SEC 104b(d).	750
33 U.S.C. 1415(a)	MARINE PROTECTION RESEARCH AND SANCTUARIES ACT VIOLATIONS—FIRST & SUBSEQUENT VIOLATIONS.	62,000/157,500
42 U.S.C. 300g–3(b)	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(b).	31,500
42 U.S.C. 300g–3(c)	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(c).	31,500
42 U.S.C. 300g–3(g)(3)(A)	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(g)(3)(a).	31,500
42 U.S.C. 300g–3(g)(3)(B)	SAFE DRINKING WATER ACT/MAXIMUM ADMINISTRATIVE PENALTIES PER SEC 1414(g)(3)(B).	6,200/28,000
42 U.S.C. 300g–3(g)(3)(C)	SAFE DRINKING WATER ACT/THRESHOLD REQUIRING CIVIL JUDICIAL ACTION PER SEC 1414(g)(3)(C).	28,000
42 U.S.C. 300h–2(b)(1)	SDWA/CIVIL JUDICIAL PENALTY/VIOLATIONS OF REQS—UNDERGROUND INJECTION CONTROL (UIC).	31,500
42 U.S.C. 300h–2(c)(1)	SDWA/CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.	12,000/157,500
42 U.S.C. 300h–2(c)(2)	SDWA/CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.	6,200/157,500
42 U.S.C. 300h–3(c)(1)	SDWA/VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL.	6,200
42 U.S.C. 300h–3(c)(2)	SDWA/WILLFUL VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL.	12,000
42 U.S.C. 300i(b)	SDWA/FAILURE TO COMPLY WITH IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER.	17,000
42 U.S.C. 300i–1(c)	SDWA/ATTEMPTING TO OR TAMPERING WITH PUBLIC WATER SYSTEM/CIVIL JUDICIAL PENALTY.	25,000/62,000
42 U.S.C. 300j(e)(2)	SDWA/FAILURE TO COMPLY W/ORDER ISSUED UNDER SEC. 1441(c)(1).	3,150
42 U.S.C. 300j–4(c)	SDWA/REFUSAL TO COMPLY WITH REQS. OF SEC. 1445(a) OR (b).	31,500
42 U.S.C. 300j–6(b)(2)	SDWA/FAILURE TO COMPLY WITH ADMIN. ORDER ISSUED TO FEDERAL FACILITY.	28,000
42 U.S.C. 300j–23(d)	SDWA/VIOLATIONS/SECTION 1463(b)—FIRST OFFENSE/REPEAT OFFENSE.	6,200/62,000
42 U.S.C. 4852d(b)(5)	RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992, SEC 1018—CIVIL PENALTY.	12,000
42 U.S.C. 4910(a)(2)	NOISE CONTROL ACT OF 1972—CIVIL PENALTY	12,000
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C ASSESSED PER ORDER.	31,500
42 U.S.C. 6928(c)	RES. CONS. & REC. ACT/CONTINUED NONCOMPLIANCE OF COMPLIANCE ORDER.	31,500

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount (dollars)
42 U.S.C. 6928(g)	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C.	31,500
42 U.S.C. 6928(h)(2)	RES. CONS. & REC. ACT/NONCOMPLIANCE OF CORRECTIVE ACTION ORDER.	31,500
42 U.S.C. 6934(e)	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH SECTION 3013 ORDER.	6,200
42 U.S.C. 6973(b)	RES. CONS. & REC. ACT/VIOLATIONS OF ADMINISTRATIVE ORDER.	6,200
42 U.S.C. 6991e(a)(3)	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH UST ADMINISTRATIVE ORDER.	31,500
42 U.S.C. 6991e(d)(1)	RES. CONS. & REC. ACT/FAILURE TO NOTIFY OR FOR SUBMITTING FALSE INFORMATION.	12,000
42 U.S.C. 6991e(d)(2)	RCRA/VIOLATIONS OF SPECIFIED UST REGULATORY REQUIREMENTS.	12,000
42 U.S.C. 6992d(a)(2)	RCRA/NONCOMPLIANCE W/MEDICAL WASTE TRACKING ACT ASSESSED THRU ADMIN ORDER.	31,500
42 U.S.C. 6992d(a)(4)	RCRA/NONCOMPLIANCE W/MEDICAL WASTE TRACKING ACT ADMINISTRATIVE ORDER.	31,500
42 U.S.C. 6992d(d)	RCRA/VIOLATIONS OF MEDICAL WASTE TRACKING ACT—JUDICIAL PENALTIES.	31,500
42 U.S.C. 7413(b)	CLEAN AIR ACT/VIOLATION/OWNERS & OPERATORS OF STATIONARY AIR POLLUTION SOURCES—JUDICIAL PENALTIES.	31,500
42 U.S.C. 7413(d)(1)	CLEAN AIR ACT/VIOLATION/OWNERS & OPERATORS OF STATIONARY AIR POLLUTION SOURCES—ADMINISTRATIVE PENALTIES PER VIOLATION & MAX.	31,500/250,000
42 U.S.C. 7413(d)(3)	CLEAN AIR ACT/MINOR VIOLATIONS/STATIONARY AIR POLLUTION SOURCES—FIELD CITATIONS.	6,200
42 U.S.C. 7524(a)	TAMPERING OR MANUFACTURE/SALE OF DEFEAT DEVICES IN VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY PERSONS.	3,150
42 U.S.C. 7524(a)	VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY MANUFACTURERS OR DEALERS; ALL VIOLATIONS OF 7522(a)(1), (2), (4), & (5) BY ANYONE.	31,500
42 U.S.C. 7524(c)	ADMINISTRATIVE PENALTIES AS SET IN 7524(a) & 7545(d) WITH A MAXIMUM ADMINISTRATIVE PENALTY.	250,000
42 U.S.C. 7545(d)	VIOLATIONS OF FUELS REGULATIONS	31,500
42 U.S.C. 9604(e)(5)(B)	SUPERFUND AMEND. & REAUTHORIZATION ACT/NONCOMPLIANCE W/REQUEST FOR INFO OR ACCESS.	31,500
42 U.S.C. 9606(b)(1)	SUPERFUND/WORK NOT PERFORMED W/IMMINENT, SUBSTANTIAL ENDANGERMENT.	31,500
42 U.S.C. 9609(a) & (b)	SUPERFUND/ADMIN. PENALTY VIOLATIONS UNDER 42 U.S.C. SECT. 9603, 9608, OR 9622.	31,500
42 U.S.C. 9609(b)	SUPERFUND/ADMIN. PENALTY VIOLATIONS—SUBSEQUENT	92,500
42 U.S.C. 9609(c)	SUPERFUND/CIVIL JUDICIAL PENALTY/VIOLATIONS OF SECT. 9603, 9608, 9622.	31,500
42 U.S.C. 9609(c)	SUPERFUND/CIVIL JUDICIAL PENALTY/SUBSEQUENT VIOLATIONS OF SECT. 9603, 9608, 9622.	92,500
42 U.S.C. 11045(a) & (b)(1), (2) & (3).	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES.	31,500
42 U.S.C. 11045(b)(2) & (3)	EPCRA CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES—SUBSEQUENT VIOLATIONS.	92,500
42 U.S.C. 11045(c)(1)	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11022 OR 11023.	31,500
42 U.S.C. 11045(c)(2)	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11021 OR 11043(b).	12,000
42 U.S.C. 11045(d)(1)	EPCRA—FRIVOLOUS TRADE SECRET CLAIMS—CIVIL AND ADMINISTRATIVE PENALTIES.	$31,500

PART 27—[AMENDED]

2. The authority citation for part 27 continues to read as follows:

Authority: 31 U.S.C. 3801–3812; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note; Pub L. 104–134, 110 Stat. 1321, 31 U.S.C. 3701 note.

3. Section 27.3 is amended by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

§ 27.3 Basis for civil penalties and assessments.

(a) * * *

(1) * * *

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $6,200 [1] for each such claim.

* * * * *

(b) * * *

(1) * * *

(ii) Contains, or is accompanied by, an express certification or affirmation of

[1] As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321).

the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $6,200 [2] for each such statement.

* * * * *

[FR Doc. 02–15190 Filed 6–17–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 02–12480]

RIN 2127–AI86

Federal Motor Vehicle Safety Standards; Head Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Interim final rule, request for comments.

SUMMARY: This interim final rule amends the schedule for compliance by manufacturers of vehicles built in two or more stages with the upper interior head protection requirements of Federal Motor Vehicle Safety Standard No. 201, Occupant Protection in Interior impact.

This interim final rule delays the date on which manufacturers of vehicles built in two or more stages must produce vehicles meeting the upper interior head protection performance requirements of Standard No. 201 from September 1, 2002, until September 1, 2003. The agency is issuing this interim final rule to provide the agency time to complete a rulemaking action initiated by petitions for rulemaking requesting that NHTSA consider modifying the requirements of Standard No. 201 as they apply to vehicles manufactured in two or more stages. As that rulemaking action may result in modification of Standard No. 201 as it applies to these multi-stage vehicles, the agency has decided to extend the compliance date until the final action is taken on the petitions. It expects to take final action before September 1, 2003.

DATES: This interim final rule becomes effective on July 18, 2002. Comments on this interim rule are due no later than August 19, 2002.

[2] As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321).

ADDRESSES: You may submit your comments in writing or electronically. Written comments should refer to the docket number of this notice and be submitted (preferably in two copies) to: Docket Management, PL–401, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are Monday-Friday from 10 a.m. to 5 p.m., excluding holidays.) Electronic comments can be submitted through the worldwide web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Dr. William Fan, Office of Crashworthiness Standards, at (202) 366–4922, facsimile (202) 366–4329.

For legal issues, you may call Otto Matheke, Office of the Chief Counsel, at 202–366–5263.

SUPPLEMENTARY INFORMATION:

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I. Background

NHTSA issued a final rule on August 18, 1995, amending Federal Motor Vehicle Safety Standard No. 201, Occupant Protection in Interior Impact, to require passenger cars, and trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, to provide head protection during a crash when an occupant's head strikes the upper interior, i.e., the roof pillars, side rails, headers, and the roof itself of the vehicle. (60 FR 430341) The final rule responded to the NHTSA Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act (''ISTEA''), Pub. L. 102–240). ISTEA required NHTSA to address several vehicle safety matters through rulemaking. One of these matters, set forth in section 2503(5), is improved head impact protection from interior components (i.e., roof rails, pillars, and front headers) of passenger cars.

The final rule, which mandated compliance with the new requirements beginning on September 1, 1998, significantly expanded the scope of Standard 201. Previously, the standard applied to the instrument panel, seat backs, interior compartment doors, arm rests and sun visors. To determine compliance with the upper interior impact requirements, the final rule added procedures for a new in-vehicle component test in which a Free Motion Headform (FMH) is fired at certain target locations on the upper interior of a vehicle at an impact speed of up to and including 24 km/h (15 mph). Data collected from a FMH impact are translated into a value known as a Head Injury Criterion (HIC) score. The resultant HIC must not exceed 1000.

The standard, as further amended on April 8, 1997 (62 FR 16718), provides manufacturers with four alternate phase-in schedules for complying with the upper interior impact requirements. First, as set forth in S6.1.1, manufacturers may comply by having the following percentages of their production meet the upper interior impact requirements: 10 percent of production on or after September 1, 1998 and before September 1, 1999; 25 percent of production on or after September 1, 1999 and before September 1, 2000, 40 percent of production on or after September 1, 2000 and before September 1, 2001, 70 percent of production on or after September 1, 2001 and before September 1, 2002, and 100 percent of production after September 1, 2002.

Second, an alternative schedule set forth in S6.1.2 provides that manufacturers may comply by meeting the following phase-in schedule: 7 percent of the vehicles manufactured on or after September 1, 1998 and before September 1, 1999; 31 percent of vehicles manufactured on or after September 1, 1999 and before September 1, 2000; 40 percent of vehicles manufactured on or after September 1, 2000 and before September 1, 2001; 70 percent of vehicles manufactured on or after September 1, 2001 and before September 1, 2002; and 100 percent of all vehicles manufactured after September 1, 2002.

Third, under the phase-in schedule set forth in S6.1.3, manufacturers need not produce any complying vehicles before September 1, 1999. However, all vehicles produced on or after that date must comply. Fourth, S6.1.4 of the April 8, 1997 final rule provided that multi-stage vehicles produced after September 1, 2002, were required to comply.

II. Petitions for Rulemaking

The Recreation Vehicle Industry Association (RVIA) filed a petition for rulemaking on October 4, 2001 requesting that the agency modify Standard No. 201 to exclude conversion vans and motor homes with gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, from the application of the upper interior head

protection requirements of the Standard. The National Truck Equipment Association (NTEA) filed a petition for rulemaking on November 27, 2001 seeking similar relief. Both petitions requested that NHTSA extend the existing phase-in for manufacturers of multi-stage vehicles (i.e., the fourth one described above) from September 1, 2002 to March 1, 2004. By letters dated March 28 and April 5, 2002, NHTSA indicated it was granting the petitions. The agency is currently embarking on a rulemaking proceeding to address the issues raised in the petitions.

A. RVIA

The Recreation Vehicle Industry Association (RVIA) is a trade association representing manufacturers of conversion vehicles (CVs) and motor homes. RVIA states that its member companies, which produced approximately 60,000 vehicles with a GVWR under 4,536 kilograms (10,000 pounds) in 2001, produce over 90 percent of all CVs and 99 percent of all motor homes sold in the United States. RVIA submitted a petition for rulemaking on October 4, 2001 requesting the NHTSA consider rulemaking to amend Standard No. 201 so that CVs and motor homes would not be required to meet the upper interior head protection requirements of the Standard. The petition further requested that the compliance date for multi-stage vehicles be modified from September 1, 2002 to March 1, 2004.

RVIA's petition contends that the characteristics of the manufacturers producing CVs, the unique nature of CVs, and the methods used to produce these vehicles indicate that NHTSA should not require CVs to meet the upper interior head protection requirements of Standard No. 201. The RVIA petition states that producers of CVs and motor homes are almost exclusively small businesses with fewer than 500 employees. These small businesses produce CVs and motor homes by purchasing incomplete vehicles from major manufacturers and installing unique interiors, seats and accessories. Many of these manufacturers modify the vehicle structure by adding windows and raising or replacing the original roof. According to RVIA, each of these manufacturers offers a wide variety of interior configurations and designs in order to attract customers who might otherwise purchase a conventional vehicle or a CV or motor home built by a competitor.

RVIA's petition emphasizes that the CV and motor home manufacturers serve a niche market where buyers are seeking unique designs and capabilities. This, according to RVIA, has several effects that make compliance with the upper interior head protection requirements difficult for its members.

This demand for unique vehicles, in RVIA's view, precludes the use of standardized components across the industry or even within the product lines of a single manufacturer. The limited sales volume of CVs and small motor homes reduces the opportunity to spread development and testing costs over a large number of vehicles. The result, according to RVIA, is that compliance with the upper interior head impact protection requirements would force individual companies to spend excessive amounts on development and testing of wide variety of components while being forced to add these development and testing costs to the price of a very small number of vehicles. RVIA contends that the resulting increases in costs and prices for individual vehicles would be so great that consumers would no longer purchase CVs and motor homes. Finally, RVIA's petition indicates that the major manufacturers providing incomplete vehicles for conversion into CVs and motor homes had not, at the time of its petition, begun to provide any vehicles that complied with Standard 201's upper interior requirements for those portions of the vehicles completed by the incomplete vehicle manufacturer. Moreover, these manufacturers will not, according to RVIA, be doing so until September 1, 2002. RVIA says that this timing would make it extremely difficult for RVIA members to use these vehicles as base vehicles for their own production until well after the September 1, 2002 compliance date.

RVIA's petition also outlines efforts made by the CV and motor home industry to comply with the upper interior head protection requirements by September 1, 2002. The petition indicates that RVIA members attempted to devise common components that could be used to meet the Standard. However, according to RVIA, the common component concept was unsatisfactory in terms of performance and, due to the need for individual manufacturers to use unique components, ill-suited to the industry. Similarly, because of the variations between vehicles built by different manufacturers, cooperative-testing arrangements that might be used for compliance with other standards could not be used to determine compliance with the upper interior head protection requirements of Standard No. 201. Therefore, RVIA contends that the only means for its member companies to meet the upper interior head protection requirements is for each manufacturer to develop individual components for each of its model lines.

Finally, RVIA's petition contends that applying the upper interior head protection requirements to CVs and motor homes would not be economically practicable. RVIA estimated that compliance costs for CVs would be at least $2,401 per vehicle. For a motor home, RVIA estimated that the per vehicle compliance costs would be not less than $4,748. In RVIA's view, these costs are excessive, particularly because it believes that the safety benefits gained from compliance would be minimal. According to RVIA, the fatality rate for van-based motor homes is 0.00039 per 100,000 annual vehicle miles. Based on this rate, RVIA estimates that the safety benefit of having van-based motor homes comply with the upper interior head protection requirements would be negligible—less than one fatality per year. Although RVIA did not provide a similar analysis for CVs, it argued that the safety benefits in the case of CVs would also be quite low.

B. NTEA

The NTEA describes itself as the nation's only trade association representing distributors and manufacturers of multi-stage produced work-related trucks, truck bodies and equipment. NTEA describes its average member company as a small business employing less than 300 people that either manufactures specialized truck bodies and installs them on incomplete vehicles or installs truck bodies built by others onto incomplete vehicles. According to the NTEA petition, its member companies produce fire trucks, ambulances, utility company vehicles, aerial bucket trucks, delivery trucks and a variety of other specialized vehicles for commercial or vocational use. As is the case with manufacturers of CVs and motor homes, these manufacturers use incomplete vehicles provided by major manufacturers and either build or assemble a completed vehicle for a specified use using the chassis provided by another company.

NTEA's petition indicates that its member companies produce approximately 377,000 vehicles annually that are subject to the upper interior head protection requirements of Standard No. 201. The petition further states that these vehicles are produced in at least 1,200 identified configurations. NTEA contends that the variety of these different configurations precludes certification to the upper interior head protection requirements

because it is impossible to identify a representative ''generic'' vehicle interior configuration for this great variety of vehicles. Further, NTEA believes that a ''generic'' configuration is ill-suited to Standard No. 201 as minor differences in a vehicle interior can affect compliance with the upper interior requirements. Other methods that NTEA members use to meet their certification responsibilities, such as relying on the incomplete vehicle manufacturer's certification, are of little value in regard to the upper interior as the areas originally certified by the incomplete vehicle manufacturer are either insufficient or would be negated by necessary modifications. Therefore, according to NTEA, its member companies bear a heavy burden—each final stage manufacturer must devote significant resources in an effort to develop compliant vehicles.

In NTEA's view, the burden of complying with the upper interior head impact requirements is simply too great. The organization states that its members—as small businesses—do not have the required technical expertise and resources. Moreover, the NTEA petition indicates that compliance testing for a typical vehicle produced by one of its member companies would cost between $14,000 and $17,000. As these costs are simply compliance test costs, and not development or prototype testing, NTEA believes that the actual costs of compliance would be much greater. Since its members do not produce large numbers of identical vehicles, NTEA contends that it would not be possible for its members to absorb the costs of countermeasure development and compliance testing without raising the price of each finished vehicle to a point higher than the market will bear.

NTEA's petition indicates that there are a number of practical obstacles to compliance with the upper interior head protection requirements of Standard No. 201. As a large number of the vehicles produced by NTEA members are work trucks, work vans, emergency vehicles, or police vehicles, many of them are produced with bulkheads or dividers needed to ensure that objects or people that must remain in the rear of the vehicle actually do so. Installation of these bulkheads, according to NTEA, is likely to require relocation of target areas originally certified by the incomplete vehicle manufacturer, adding to the burden of the NTEA member. Further, NTEA submits that, as a practical matter, it would be physically impossible for all of its member companies to even have the opportunity to perform compliance testing. According to the NTEA petition, only two independent test labs are available in the United States to perform the required compliance tests. At their current capacity, NTEA estimates that these facilities could not complete compliance testing for the 2003 model year vehicles produced by NTEA members in less than 64 years.

III. Standard 201 and Vehicles Built in Two or More Stages

The member companies of RVIA and NTEA are manufacturers who produce vehicles in two or more stages. These multi-stage manufacturers purchase incomplete vehicles from major manufacturers to serve as the basis for specialty vehicles to meet certain uses and markets. For example, an NTEA member company may purchase incomplete pickup trucks from a major manufacturer and add a specialty body in place of the standard bed. Rather than purchase a complete truck and discard the original bed, the manufacturer of the specialty vehicle, *i.e.,* the final stage manufacturer, purchases trucks that are complete except for the bed. In more complicated conversions, the final stage manufacturer may purchase a ''cutaway,'' a van chassis where the body terminates just behind the B-pillar, and add a specialized cargo body or a body designed to transport occupants such as an ambulance. The processes employed by RVIA members in producing motor homes and conversion vans are substantially similar. Incomplete vehicles are purchased from larger companies and the original vehicle is completed and/or modified for a specialty use or market.

In many cases, the final stage manufacturer is able to ''pass-through,'' *i.e.,* rely, on the original manufacturer's certification that the incomplete vehicle meets certain standards. For example, a final stage manufacturer purchasing a cutaway or pickup truck with a complete cab will ordinarily rely on the original manufacturer's certification that the cab meets the requirements of Standard No. 101, Controls and Displays. The degree to which a final stage manufacturer may ''pass through'' the original manufacturer's certification is dependent on a number of factors, including whether the original manufacturer certified the original vehicle to a particular standard, the degree to which the final stage manufacturer's completion of the vehicle affects that original certification, and the complexity of the particular standard involved.

In the case of the upper interior head protection requirements of Standard No. 201, the agency's August 18, 1995 final rule establishing those requirements contained a number of provisions intended to address the particular circumstances of multi-stage manufacturers and their products. As indicated above, S6.1 of Standard No. 201 contains four different schedules under which compliance with the upper interior head protection requirements is ''phased-in.'' NHTSA adopted these phase-in schedules to afford manufacturers sufficient leadtime to bring their vehicles into compliance with the new upper interior head protection requirements. In the case of vehicles manufactured in two or more stages, S6.1.4 did not require multi-stage vehicles to comply until the final year of the phase-in. By doing so, the agency intended to prevent the possibility that final stage manufacturers would be dependent on a source of incomplete vehicles that had not yet been brought into compliance with the upper interior impact requirements (60 FR 43049).

In addition to creating a separate phase-in schedule for multi-stage manufacturers, the August 1995 final rule also contained an exclusion for all targets in walk-in vans and restricted application of the upper interior head protection requirements in ambulances and motor homes to those target areas forward of a transverse vertical plane located 600 millimeters (24 inches) rearward of the seating reference point of the driver's seating position. Acting in response to petitions for reconsideration, NHTSA published a final rule in the **Federal Register** on April 8, 1997 (62 FR 16718) that further restricted application of the upper interior head protection requirements to vehicles likely to be built in two or more stages. In response to petitions for reconsideration questioning the ability of school bus manufacturers to bring smaller school buses into compliance with the upper interior head protection requirements, the agency excluded small buses with a GVWR above 3,860 kilograms (8,500 pounds) from the upper interior requirements. This decision was based on the fact that fatality rates for these vehicles were extremely low while the compliance costs for meeting the upper interior requirements were relatively high (62 FR 16720).

NHTSA has, however, previously considered the question of exempting vehicles built in two or more stages from the upper interior head protection requirements of Standard No. 201. Comments submitted prior to issuance of the August 1995 final rule by RVIA and NTEA raised many of the issues now outlined in their recent petitions for rulemaking. At that time, the agency

determined that there was no compelling reason not to require vehicles manufactured by NTEA and RVIA members to meet the new head protection requirements. This determination was based on the belief that these manufacturers could rely on the certification of the incomplete vehicle manufacturers for some of the target areas involved. For the remainder of the target areas involved, NHTSA believed that multi-stage manufacturers could develop cooperative tests to reduce test burdens for individual manufacturers and that these individual manufacturers could reduce testing costs by testing individual components prior to their inclusion in a completed vehicle. Therefore, the agency's Final Economic Assessment (FEA) for the August 1995 final rule concluded that the compliance test costs would be between $2000 and $4000 per model. Because final stage manufacturers could rely on the incomplete vehicle manufacturer's certification and had means available to design and test countermeasures for the remaining target areas, the August 1995 final rule did not establish any special exemptions for multi-stage manufacturers other than to exclude walk-in vans and the rear areas of motor homes and ambulances.

IV. Interim Final Rule

The amendments extending the phase-in for vehicles built in two or more stages are being published as an interim final rule. Accordingly, the revised compliance date is fully in effect 30 days after the date of this document's publication. No further regulatory action by the agency is necessary to make these regulations effective.

These amendments have been published as an interim final rule as insufficient time is available to provide for prior notice and opportunity for comment. Under the phase-in schedule in effect prior to the issuance of this rule, manufacturers of vehicles built in two or more stages would have to comply with the upper interior head protection requirements on or before September 1, 2002. If the agency were to engage in notice and comment rulemaking, the final rule would likely be issued within weeks of that date. Both the RVIA and NTEA petitions indicate that manufacturers of multi-stage vehicles have, in their efforts to bring vehicles into compliance with these requirements, discovered that substantial obstacles prevent their members from doing so. Moreover, RVIA and NTEA allege that prior agency estimates of development and compliance costs were dramatically understated while the availability of ''pass through'' certification was overstated. Because the agency has granted the petitions submitted by NTEA and RVIA and will be studying the issues raised in those petitions, the agency believes that the best course is to postpone the compliance date until the issues raised by the petitions are resolved. Accordingly, this interim final rule delays the date on which vehicles manufactured in two or more stages must comply with the upper interior head protection requirements to September 1, 2003.

NHTSA is aware that delaying the compliance date could arguably result in a decrease in safety if multi-stage manufacturers would otherwise have the capability to meet the upper interior head protection requirements. Preliminary estimates indicate that the safety benefit of requiring one year's production of vehicles manufactured in two or more stages to meet the upper interior head protection requirements is approximately 18–24 equivalent lives saved each year for the front seats and one equivalent life saved each year for the rear seats. If multi-stage vehicle manufacturers were able to produce vehicles meeting the upper interior head protection requirements, these benefits will be lost during the period of the extension. However, it also appears that NHTSA may have underestimated the difficulties faced by final stage manufacturers in meeting upper interior head protection requirements. If, as alleged by NTEA and RVIA, the compliance costs and test burdens imposed by the upper interior head protection requirements are so great that final stage manufacturers cannot bear them and remain in operation, continued maintenance of the September 1, 2002 compliance date would not produce any safety benefit and would have serious and undesirable economic effects.

The RVIA and NTEA petitions raise a number of points regarding NHTSA's earlier estimates of the costs that the upper interior head protection requirements would impose on multi-stage manufacturers. NHTSA believes that some of these arguments could have merit. The agency's belief that cooperative testing could lower the compliance costs of the upper interior head protection requirements of Standard No. 201 may have discounted the degree to which competition between final stage manufacturers of conversion vans and motorhomes prevented sharing of information regarding vehicle interiors. Insofar as conversion vans are concerned, each manufacturer strives to provide interior designs and features that differentiate their products from those of their competitors. As the uniqueness of the interior and the features incorporated into that interior are primary concerns of conversion van buyers, competitors are not likely to share their designs or the materials used in those designs with their competitors.

NHTSA also believed that final stage manufacturers could control compliance costs by testing components individually rather than completing a full prototype vehicle and then performing compliance tests. Unfortunately, experience in testing to the upper interior head protection requirements has revealed that such component testing is not entirely practical. As the upper interior head protection requirements specify that impacts be made into specific target areas of a vehicle, the target areas must be located. While incomplete vehicle manufacturers may precisely locate these target areas through computer-aided design before a vehicle is complete, final stage manufacturers must locate the target areas on the vehicle provided to them. Due to variations in target location, component testing may not be an adequate predictor of compliance. For similar reasons, final stage manufacturer modifications, such as raising or replacing the original roof, will, in most cases, result in relocation of specified target areas. Once relocated, the new target area must meet the requirements of the Standard. Given the degree to which final stage manufacturers modify their products in order to meet consumer demand or other requirements, these manufacturers may not be able to rely on the incomplete vehicle manufacturer's certification for any of the designated target areas inside the vehicle. Even in those instances in which an area of the vehicle is not modified by an intermediate or final stage manufacturer, incomplete vehicle manufacturer certifications appear to be encompassing smaller areas of the upper interior of the vehicles than was anticipated. Thus the unique characteristics of the upper interior head protection requirements of Standard No. 201, where both compliance and the test burden of ensuring compliance may be markedly changed by any modifications to the shape of the vehicle or its interior, may preclude final stage manufacturers from relying on a pass-through certification from the incomplete vehicle manufacturer.

The Regulatory Flexibility Act of 1980 requires agencies to evaluate the potential impacts of their proposed and

final rules. When NHTSA issued the final rule establishing the upper interior head impact protection requirements of Standard No. 201 in August 1995, the agency determined that the new requirements would impose a burden on small manufacturers, but that this burden would not result in a significant economic impact.

The petitions filed by RVIA and NTEA dispute this finding and submit information gained from efforts to meet the upper interior requirements that suggests that NHTSA's prior estimates may have been incorrect. As NHTSA has granted the NTEA and RVIA petitions, the agency is now engaged in a rulemaking action. The agency's consideration of the issues raised by NTEA and RVIA cannot be concluded in sufficient time to maintain the original September 1, 2002 compliance date.

NHTSA has not yet resolved these issues, so this interim final rule extends the compliance date to September 1, 2003 to afford the agency time to take further action. Although RVIA and NTEA requested that the agency extend the compliance date to March 1, 2004, NHTSA does not believe that such an extension is either necessary or desirable. Future rulemaking can, if needed, further modify the deadline established by this interim final rule.

As indicated above, the agency believes that there is good cause to find that providing notice and comment in connection with this rulemaking action is impracticable, unnecessary, and contrary to the public interest.

The agency requests written comments on extending the phase-in for vehicles manufactured for two or more stages. All comments submitted in response to this document will be considered by the agency. Following the close of the comment period, the agency will publish a document in the **Federal Register** responding to the comments and, if appropriate, will make further amendments to the extension of the phase-in requirements amended by this interim final rule.

V. Written Comments

Interested persons are invited to comment on this interim final rule. It is requested, but not required, that two copies be submitted to the Office of Docket Management, Room PL–401, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by July 18, 2002.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date.

NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in the Docket for this interim final rule in the Office of Docket Management, Room PL–401, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

VI. Regulatory Analyses and Notices

A. Economic Impacts

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. It does not impose any burden on manufacturers and extends the compliance date for existing regulatory requirements for a period of one year. The agency believes that this impact does not warrant the preparation of a full regulatory evaluation.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this final rule under the National Environmental Policy Act. This rulemaking action extends the date by which manufacturers of vehicles built in two or more stages must comply with the upper interior head impact protection requirements of Standard No. 201. It does not impose any change that would have any environmental impacts. Accordingly, no environmental assessment is required.

C. Energy Impacts

This interim final rule, which extends the date by which manufacturers of vehicles built in two or more stages must comply with the upper interior head protection requirements of Standard No. 201, does not have ''a significant adverse effect on the supply, distribution, or use of energy,'' as defined by Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. At this point, therefore, this action is not a ''significant energy action'' under Executive Order 13211 and no ''Statement of Energy Effects'' is required.

D. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking will have on small entities. As this action will provide a short term benefit for small entities by delaying the compliance date, it will have a significant economic impact on a substantial number of small entities within the context of the Regulatory Flexibility Act.

The Regulatory Flexibility Act of 1980 (Public Law 96–354) requires each agency to evaluate the potential effects of a rule on small businesses. The Small Business Administration (SBA) has set size standards for determining if a business within a specific industrial classification is a small business. The Standard Industrial Classification code used by the SBA for Motor Vehicles and Passenger Car Bodies (3711) defines a small manufacturer as one having 1,000 employees or fewer.

Most of the intermediate and final stage manufacturers of vehicles built in

two or more stages have 1,000 or fewer employees. This interim final rule extends the date by which these manufacturers must produce vehicles that meet the upper interior head protection requirements of Standard No. 201. Although this action does not modify those requirements, it provides these small businesses additional time to meet them. In the agency's view, issuance of this interim final rule is necessary to prevent adverse effects that may have been underestimated in a prior rulemaking establishing the requirements at issue. For this reason, this interim final rule regarding the compliance date will have a significant economic impact on a substantial number of small entities. The agency has performed a Regulatory Flexibility Analysis and placed a copy in the docket.

E. Federalism

E.O. 13132 requires NHTSA 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.'' E.O. 13132 defines the term ''Policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under E.O. 13132, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This interim final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This action, which extends the compliance date by which manufacturers of vehicles built in two or more stages must meet the upper interior head impact protection requirements of Standard No. 201, will not result in additional expenditures by state, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

G. Paperwork Reduction Act

There are no information collection requirements in this rule.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please forward them to Otto Matheke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

J. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

This rulemaking does not have a disproportionate effect on children. The primary effect of this rulemaking is to extend the compliance date by which manufacturers of vehicles built in two or more stages must meet the upper interior head protection requirements of Standard No. 201. The interim final rule may have an impact on the safety of multi-stage vehicles. However, this impact is likely to be evenly distributed across the population of users of these vehicles, including users of work and transport trucks.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

We are not aware of any available and potentially applicable voluntary consensus standards, i.e., ones regarding the performance of vehicle interior components in protecting against head impacts. Therefore, this rule is not based on any voluntary consensus standards.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571.201—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 21411, 21415, 21417, and 21466; delegation of authority at 49 CFR 1.50.

2. Section 571.201 is amended by revising S6.1.4.1 and S6.1.4.2 as follows:

* * * * *

S6.1.4.1 Vehicles manufactured on or after September 1, 1998 and before September 1, 2003 are not required to comply with the requirements specified in S7.

S6.1.4.2 Vehicles manufactured on or after September 1, 2003 shall comply with the requirements specified in S7.

* * * * *

Issued on: June 13, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–15334 Filed 6–13–02; 4:36 pm]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 67, No. 117
Tuesday, June 18, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–274–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737–300, –400, and –500 series airplanes, that currently requires replacement, with new parts, of the existing actuators or the rod ends on the existing actuators at wing leading edge slat positions 1, 2, 5, and 6. This new action would add a one-time inspection of all the rod ends on the actuators of the wing leading edge slats to determine if vibro-engraving was used to identify the parts, and corrective action, if necessary. This proposal is prompted by reports indicating that vibro-engraving was found on new rod ends during installation; such part markings create stress risers that reduce the fatigue life of the rod ends. The actions specified by the proposed AD are intended to prevent fatigue cracking, which could result in failure of the rod ends, uncommanded deployment of the wing leading edge slat, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 2, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–274–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–274–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1506; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–274–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–274–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 18, 2000, the FAA issued AD 2000–02–03, amendment 39–11521 (65 FR 3801, January 25, 2000), applicable to certain Boeing Model 737–300, –400 and –500 series airplanes, to require replacement, with new parts, of the existing actuators or the rod ends on the existing actuators at wing leading edge slat positions 1, 2, 5, and 6. That action was prompted by reports indicating that the rod ends on several leading edge slat actuators had fractured. The requirements of that AD are intended to prevent fatigue cracking of the rod ends of the leading edge slat actuators, which could result in uncommanded deployment of the wing leading edge slat and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2000–02–03, the FAA has received a report indicating that vibro-engraving was found on a new rod end during accomplishment of Boeing Alert Service Bulletin 737–27A1211 (which was referenced in that AD as the appropriate source of service information for accomplishing the replacement of the existing actuators or the rod ends on the existing actuators with new parts). Subsequent to the first report, a second report was received that indicated vibro-engraving was found on

two sides of certain rod ends. Vibro-engraving creates stress risers in the rod ends that reduce the fatigue life of the part and can cause fatigue cracking. The manufacturer's rod end assembly drawings do not allow vibro-engraving as an acceptable part-marking method. Fatigue cracking of the rod ends on the actuators of the leading edge slats could result in failure of the rod ends, uncommanded deployment of the wing leading edge slat, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–27A1243, dated July 26, 2001. The service bulletin describes procedures for a visual inspection of all six rod ends on the actuators of the wing leading edge slats to determine if vibro-engraving was used to identify the parts, and corrective action if vibro-engraving is found on any rod end. The corrective action consists of rework or replacement of the affected rod end with a new rod end. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

We also have reviewed and approved Boeing Alert Service Bulletin 737–27A1211, Revision 2, dated December 21, 2000, including information notice (IN) 737–27A1211 IN 03, dated July 26, 2001. (The original version and Revision 1 of this service bulletin are referenced in the existing AD as service information for accomplishment of the specified actions). There are no significant changes to Revision 2; however, Information Notice 737–27A1211 IN 03 addresses vibro-engraving as an incorrect method of identification of the rod ends and instructs operators to return vibro-engraved parts to the vendor, or to do the procedures specified in Boeing Alert Service Bulletin 737–27A1243 (described above).

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–02–03 to continue to require replacement, with new parts, of the existing actuators or the rod ends on the existing actuators at wing leading edge slat positions 1, 2, 5, and 6. This new action would add a one-time inspection of the rod ends on the actuators of the wing leading edge slats to determine if vibro-engraving was used to identify the parts, and corrective action, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Difference Between This Proposed AD and the Service Bulletin

The service bulletin recommends a visual inspection of all six rod ends on the actuators of the wing leading edge slats ''at the earliest convenient maintenance opportunity'' to determine if vibro-engraving was used to identify the rod ends, then reworking or replacing the parts that have vibro-engraving within 42 months after incorporation of Boeing Service Bulletin 737–27A1211 (described above). However, the FAA has determined that ''at the earliest convenient maintenance opportunity'' may not ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to accomplish the proposed AD. In light of all of these factors, we find a compliance time of 12,000 flight cycles or 42 months after doing the replacement required by AD 2000–02–03, whichever is first; or 12,000 flight cycles or 42 months after the effective date of the AD, whichever is first; as applicable; to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 1,963 airplanes of the affected design in the worldwide fleet. The FAA estimates that 799 airplanes of U.S. registry would be affected by this proposed AD.

Replacement of the leading edge slat actuator with an actuator that has a new rod end is one option for compliance with the actions currently required by AD 2000–02–03. Replacement of the actuators on slat positions 1, 2, 5, and 6 takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $32,252 per airplane. Based on these figures, the cost impact of the installation of actuators with new rod ends, as provided as one option by this AD, is estimated to be $32,432 per airplane.

In lieu of installation of an actuator with a new rod end, AD 2000–02–03 provides an option for replacement of the rod ends on the existing actuators. This action takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost between approximately $5,928 and $21,544 per airplane. Based on these figures, the cost impact of the replacement of the rod ends, as provided as a second option by this AD, is estimated to be between $6,168 and $21,784 per airplane.

The new inspection that is proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $95,880, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator be required to accomplish the replacement of the rod end, it would take approximately 1 work hour per rod end to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts would cost between $2,917 and $5,527 per rod end. Based on these figures, the cost impact of any replacement action is estimated to be between $2,977 and $5,587 per rod end.

Should an operator be required to accomplish the rework of the rod end, it would take approximately 2 work hours per rod end to accomplish the rework, at an average labor rate of $60 per hour. Based on these figures, the cost impact of the rework is estimated to be $120 per rod end.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11521 (65 FR 3801, January 25, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2001–NM–274–AD. Supersedes AD 2000–02–03, Amendment 39–11521.

Applicability: Model 737–300, –400, and –500 series airplanes; line numbers 1001 through 3132 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the rod ends of the actuators of the leading edge slats, which could result in failure of the rod ends, uncommanded deployment of the wing leading edge slat, and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 2000–02–03

Replacement

(a) Within 24 months after February 29, 2000 (the effective date of AD 2000–02–03, amendment 39–11521): Replace the leading edge slat actuator with an actuator that has a new rod end, or replace the rod end on the existing slat actuator with a new rod end, at slat positions 1, 2, 5, and 6; in accordance with the Accomplishment Instructions in Boeing Alert Service Bulletin 737–27A1211, dated November 19, 1998; Revision 1, dated December 9, 1999; or Revision 2, dated December 21, 2000, including information notice (IN) 737–27A1211 IN 03, dated July 26, 2001.

Spares

(b) As of February 29, 2000, no person shall install any part having a part number identified in the ''Existing Part Number'' column of Section 2.E. of Boeing Alert Service Bulletin 737–27A1211, dated November 19, 1998, on any airplane.

New Requirements of This AD

One-Time Inspection/Corrective Action

(c) Do a one-time general visual inspection of all six rod ends on the actuators of the wing leading edge slats to determine if vibro-engraving was used to identify the rod ends, at the time specified in paragraph (c)(1) or (c)(2) of this AD, as applicable, per the Work Instructions of Boeing Alert Service Bulletin 737–27A1243, dated July 26, 2001. If vibro-engraving is found, rework or replace the affected rod end with a new rod end at the time specified in paragraph (c)(1) or (c)(2) of this AD, as applicable, per the service bulletin. If no vibro-engraving is found, no further action is required by this paragraph.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) For airplanes on which the rod ends were replaced as required by paragraph (a) of this AD: Within 12,000 flight cycles or 42 months after doing the replacement per paragraph (a) of this AD, whichever is first.

(2) For all other airplanes: Within 12,000 flight cycles or 42 months after the effective date of this AD, whichever is first.

Spares

(d) After the effective date of this AD, no person shall install on any airplane a rod end having vibro-engraving, or other part markings that penetrate the surface, unless that part has been reworked as required by this AD.

Alternative Methods of Compliance

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–02–03, amendment 39–11521, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on June 7, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–15244 Filed 6–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–176–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 series airplanes. This proposal would require, for certain airplanes, a one-time inspection to detect chafing or other damage of the integrated drive generator (IDG) cables and the firewall separators of the pylon, and corrective action if necessary. For other airplanes, this proposal would require identification of the part number of the clamps, and replacement with new

clamps if necessary. This action is necessary to prevent electrical arcing between the IDG cables and the firewall separators due to chafing, which could result in an in-flight fire and/or loss of electrical power. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 18, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–176–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–176–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Luciano L. Castracane, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–176–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–176–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 series airplanes. TCCA advises that there have been numerous incidents of chafing of the integrated drive generator (IDG) cables on the firewall separators of the pylon. This condition, if not corrected, could result in electrical arcing between the IDG cables and the firewall separators, and consequent in-flight fire and/or loss of electrical power.

Explanation of Relevant Service Information

The manufacturer has issued Bombardier Alert Service Bulletin A601R–24–091, Revision ''C,'' dated February 1, 2001, which describes procedures for a one-time visual inspection to detect chafing or damage of the IDG cables from the pylon to its attaching points and the firewall separators in the pylon area, and repair or replacement with new IDG cables if necessary. For airplanes that have already been repaired/modified in accordance with a prior version of the service bulletin, Revision ''C'' describes procedures for identifying the part number of the IDG clamp, and replacing it with a new clamp having a different part number if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2000–17R1, dated October 30, 2000, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require, for certain airplanes, a one-time inspection to detect chafing or other damage of the IDG cables and the firewall separators of the pylon, and corrective action if necessary. For other airplanes, this proposal would require identification of the part number of the clamps, and replacement with new clamps if necessary. The inspection, corrective action, and replacement shall be done in accordance with the service bulletin identified previously.

Cost Impact

The FAA estimates that 160 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 7 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on

these figures, the cost impact of the proposed AD is estimated to be $420 per airplane.

It would take approximately 1 work hour per airplane to determine the part number of the clamp, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD is estimated to be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair): Docket 2001–NM–176–AD.

Applicability: Model CL–600–2B19 series airplanes, serial numbers 7003 through 7269 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing between the integrated drive generator (IDG) cables and the firewall separators due to IDG cable chafing, which could result in an in-flight fire and/or loss of electrical power, accomplish the following:

Part Number Identification

(a) For airplanes that have been repaired or modified before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–24–091, dated March 9, 2000; Revision A, dated May 10, 2000; or Revision B, dated September 14, 2000: Within 550 flight hours or 2 months after the effective date of this AD, whichever occurs first, determine the part numbers (P/Ns) of the clamps that hold the IDG cables on the left and right pylons.

(1) If the P/N of all clamps is TA121010R14–04: No further action is required by this AD.

(2) If the P/N of any clamp is NOT TA121010R14–04: Before further flight, replace the discrepant clamp with a clamp having P/N TA121010R14–04.

Inspection

(b) For airplanes not identified in paragraph (a) of this AD: Within 550 flight hours or 2 months after the effective date of this AD, whichever occurs first, perform a one-time general visual inspection to detect chafing and other damage of the IDG cables and the firewall separators of the pylon, in accordance with Bombardier Alert Service Bulletin A601R–24–091, Revision ''C,'' dated February 1, 2001. Prior to further flight thereafter, perform all applicable corrective actions and install a clamp, a conduit, and Teflon strips, in accordance with the alert service bulletin. If a temporary repair is performed, replace the harnesses with new parts within 4,000 flight hours after the repair, in accordance with the alert service bulletin.

Note 2: Accomplishment of an inspection and applicable corrective actions before the effective date of this AD in accordance with Bombardier Service Bulletin A601R–24–091, Revision 'B,' dated September 14, 2000, is acceptable for compliance with the requirements of paragraph (b) of this AD.

Note 3: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Spares

(c) As of the effective date of this AD, no person may install an IDG cable clamp, unless it has P/N TA121010R14–04, on any airplane.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 5: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–17R1, dated October 30, 2000.

Issued in Renton, Washington, on June 7, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–15243 Filed 6–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 211, and 601

[Docket No. 02N–0204]

Bar Code Label Requirements for Human Drug Products; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to solicit comments for the development of a regulation on bar code labeling for human drug products, including biologic products. We (FDA) will also explore issues surrounding bar codes on medical devices. We are holding this meeting to support the initiative of the Secretary of Health and Human Services to reduce medication errors.

DATES: The public meeting will be held on July 26, 2002, from 9 a.m. to 5 p.m. Registration to attend the meeting must be received by July 12, 2002. Submit written or electronic comments for consideration during the meeting by July 12, 2002.

ADDRESSES: The meeting will be held at the Natcher Auditorium, Building 45, National Institutes of Health (NIH), Bethesda, MD. Parking will be limited and there may be delays entering the NIH campus due to increased security. We recommend arriving by Metro if possible. NIH is accessible from the Metro's red line at the Medical Center/NIH stop.

FOR FURTHER INFORMATION CONTACT:

Registration for Speaking Attendees: If you wish to speak at the public meeting, please contact Mary C. Gross, Office of Drug Safety, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, rm. 15B–32, Rockville, MD 20857, 301–827–3193, FAX 301–443–9664, e-mail: *grossm@cder.fda.gov*. Speakers must register and submit a short summary of your presentation by July 12, 2002, to Mary C. Gross; faxed copies of presentations are permissible. We encourage consolidation of like-minded presentations to enable a broad range of views to be presented.

Registration for General Attendees: If you wish to attend the public meeting, register with Elizabeth French, Office of Policy, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, rm. 14–101, Rockville, MD 20857, 301– 827–3360, FAX 301–827–6777, e-mail: *efrench@oc.fda.gov*. General attendees should register no later than July 12, 2002. As time permits, we will accept oral comments from the audience. More information is available on the Internet at *http://internet-dev.fda.gov/oc/meetings/barcodemtg.html*.

SUPPLEMENTARY INFORMATION:

I. Background

In 1999, the Institute of Medicine (IOM) report entitled ''To Err is Human: Building a Safer Health System'' cited research stating that there are an estimated 100,000 deaths in the United States every year from preventable medical errors in hospitals alone.[1] The range of deaths reported, between 44,000 and 98,000 deaths, was based on the 1984 Harvard Medical Practice Study and confirmatory studies done in Colorado and Utah. These numbers reflect the entire area of medical errors, including, for example, surgical errors, iatrogenic infections, medication errors, and incorrect use of medical products. Of the projected 100,000 deaths, we believe that approximately 30 to 50 percent are associated with errors involving FDA regulated medical products (e.g., drugs, devices, blood and blood products, or vaccines). In addition to the human cost of errors involving drugs, there are also significant economic costs. An article published in 1995 estimated the direct cost of preventable drug related mortality and morbidity to be $76.6 billion, with drug related hospital admissions accounting for much of the cost.[2] Another article, published in 2001, used updated cost estimates derived from current medical and pharmaceutical literature to revise the $76.6 billion estimate to exceed $177.4 billion; of which hospital admissions accounted for $121.5 billion in costs, and long-term care admissions accounted for another $32.8 billion.[3]

Medication errors are a subset of the wider category of medical errors. Medication errors are defined by the National Coordinating Council for Medication Error Reporting and Prevention as:

> * * * any preventable event that may cause or lead to inappropriate medication use or patient harm while the medication is in the control of the healthcare professional, patient, or consumer. Such events may be related to professional practice; healthcare products, procedures, and systems, including prescribing; order communication; product labeling, packaging, and nomenclature; compounding; dispensing; distribution; administration; education; monitoring; and use.[4]

Medication errors can lead to adverse drug events. It is estimated that 770,000 adverse drug events leading to injury or death occur yearly in U.S. hospitals alone, and that between 28 to 95 percent of these are preventable, i.e., can be defined as errors. Computerized hospital medication use and monitoring systems could prevent many of these medication errors.[5]

In response to the IOM report, the Secretary of Health and Human Services directed FDA to explore possible regulatory approaches to reduce these preventable errors. Errors related to dispensing and administration can be minimized through the use of bar codes. For example, if a health professional could use a bar code scanner to compare the bar code on a human drug product to a specific patient's drug regimen, the health professional would be able to verify that the right patient is receiving the right drug, at the right dose, and at the right time. Bar code advocates have recommended that the bar code contain a unique numerical code that is dose specific to identify the manufacturer, product, and package size or type, lot number, and expiration date.

The availability of bar codes for pharmaceuticals would also facilitate other patient safety initiatives, for example, automated drug prescribing or ordering, automated monitoring for drug toxicities in hospitals, and as a component of the automated medical record. Automation of the drug prescribing and ordering system, if linked to a bar coding system, has the potential not only to minimize drug mixups, but also to make sure prescribers have access to crucial information at the point of prescribing.

We are considering whether to require bar codes on human drug products, including certain biologic products. The bar code would contain certain information about the product, such as a dose-specific individual identifying

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[1] Linda T. Kohn, Janet M. Corrigan, and Molla S. Donaldson, editors; ''To Err Is Human: Building a Safer Health System,'' Committee on Quality of Health Care in America, Institute of Medicine, November 29, 1999.

[2] Johnson, J. A. and J. L. Bootman, ''Drug-Related Morbidity and Mortality: A Cost-of-Illness Model,'' *Archives of Internal Medicine,* pp. 1949–1956 (1995).

[3] Ernst, F. R. and A. J. Grizzle, ''Drug-Related Morbidity and Mortality: Updating the Cost-of-Illness Model,'' *Journal of the American Pharmaceutical Association*, vol. 41, pp. 192–199, March/April 2001.

[4] National Coordinating Council for Medication Error Reporting and Prevention, ''What is a Medication Error?'' (Undated).

[5] Agency for Health Care Quality and Research, ''Research in Action: Reducing and Preventing Adverse Drug Events (ADEs) to Decrease Hospital Costs,'' April 11, 2001. (*http://www.ahrq.gov/qual/aderia/aderia.htm*)

number. We are considering whether to require the bar code to contain other information, such as the drug product's expiration date and lot number, to make it easier to identify expired drugs and recalled drugs that may not be safe and effective for use. We are also exploring issues surrounding bar codes on medical devices.

II. Scope of Discussion

We will hold a public meeting on June 13, 2002, from 9 a.m. to 5 p.m., to discuss bar code labeling. We will give careful consideration to technical issues regarding the development and implementation of a possible bar code label. We anticipate that discussions will include presentations from invited speakers as well as from members of the public.

We invite public comment on this issue, and we intend to focus on the following questions:

A. General Questions Related to Drugs and Biologics:

1. Which medical products should carry a bar code? For example, should all prescription and over-the-counter (OTC) drugs be bar coded? Should blood products and vaccines carry a barcode?

2. What information should be contained in the bar code? What do you consider to be critical bar code information that will reduce medical product errors? If data exists, please provide it for the record. What information would be helpful but not necessarily critical, for reducing medication errors? Provide data.

3. Considering current scanners and their ability to read certain symbologies, should the rule adopt a specific bar code symbology (e.g., reduced space symbology (RSS) and 2-dimensional symbology)? Should we adopt one symbology over another, or should we allow for ''machine readable'' formats? What are the pros and cons of each approach?

4. Assuming that we require bar codes on all human drug products, where on the package should the bar codes be placed? Are there benefits to placing bar codes on immediate containers, such as the bottles, tubes, foiled-wrapped tablets, and capsules, found inside prescription or OTC product cartons? Is there a way to distinguish whether certain containers with a bar code will have a more significant effect on preventing errors than others?

5. What products already contain bar codes? Who (i.e., hospitals, nursing homes, outpatient clinics, retail pharmacies, etc.) uses these bar codes and how? As with all comments, if data exists, please provide it for the record.

B. Medical Device Questions

1. Should medical devices carry a bar code? What information should be included in the bar code? For example, unlike drug products, medical devices do not have unique identifier numbers.

2. If medical devices are bar coded, should all medical devices, or only certain devices be bar coded? For example, tongue depressors, syringes, and crutches are medical devices, but perhaps do not need a bar code.

3. Should reprocessed, repackaged, refurbished, or multiple-use medical devices be bar coded? Who should be responsible for generating and applying the new bar codes and how should these barcodes be different from the original manufacturers' bar codes?

4. What public health/patient safety benefits can be derived from bar coding medical devices? If data exists, please provide it for the record.

C. General Questions and Economic Impact Questions

1. Will bar code printing costs cause you to modify your packaging choices, such as reconsidering the use of blister packages or influencing future package choices? If so, how?

2. Have you implemented bar code technology in your product line? If so, what elements and symbology are included in the bar code?

3. If you manufacture and bar code products, how do verification requirements for bar codes affect your ability to add bar codes? How much barcode verification is appropriate as part of the quality system?

4. Can bar codes be produced with a dose specific unique identifying number, lot number, and expiration date at your highest production line speeds?

5. What equipment solutions are vendors offering to manufacturers for bar coding or scanning? How quickly can such systems run? What type of packaging line is equipment used for?

6. What is the expected rate of technology acceptance in all health care sectors of machine-readable technologies? What are the major inhibiting factors to the current use of machine readable technologies? What would be the expected benefit of using machine readable technology in the delivery of health care services (including drug products)? What would be the expected benefit of machine readable technology for other potential uses (e.g., reports, recordkeeping, inventory control, formulary setting, etc.)?

7. Assuming a final rule is issued requiring bar coding, when should it become effective? For example, would some industries or products require more time than others to comply with a bar coding requirement? Would a certain compliance time sharply reduce costs of relabeling?

III. Comments

Interested persons, who wish their comments to be considered during the meeting, may submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, written or electronic comments by July 12, 2002. Comments will be accepted after the meeting until August 9, 2002. Submit electronic comments to *fdadockets@oc.fda.gov* or *http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm*. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Transcripts

You may request a transcript of the meeting in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857. The transcript of the public meeting will be available approximately 15 working days after the meeting, at a cost of 10 cents per page. You may also examine the transcript of the meeting after June 28, 2002, at the Dockets Management Branch (see *Comments*) between 9 a.m. and 4 p.m., Monday through Friday and on the Internet at *http://www.fda.gov*.

V. Electronic Access

Persons with access to the Internet may obtain additional information on the public meeting at *http://internet-dev.fda.gov/oc/meetings/barcodemtg.html*.

Dated: June 11, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–15208 Filed 6–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–103735–00; REG–110311–98]

RIN 1545–AX81; 1545–AW26

Modification of Tax Shelter Rules III

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: These proposed rules provide the public with additional guidance needed to comply with the disclosure rules under section 6011(a) and the registration requirement under section 6111(d). These rules also affect the list maintenance requirement under section 6112. The proposed rules affect taxpayers participating in certain reportable transactions, persons responsible for registering confidential corporate tax shelters, and organizers of potentially abusive tax shelters. In the rules and regulations portion of this issue of the **Federal Register**, the IRS is issuing temporary regulations modifying the rules relating to the requirement that certain taxpayers file a statement with their Federal income tax returns under section 6011(a), and the registration of confidential corporate tax shelters under section 6111(d). The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by September 16, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–103735–00; REG–110311–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–103735–00; REG–110311–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Danielle M. Grimm or Tara P. Volungis, 202–622–3080 (not a toll-free number); concerning submissions, Sonya Cruse, 202–622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1685.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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

Background

The temporary regulations amend 26 CFR part 1 regarding rules relating to the filing and records requirements for certain taxpayers under section 6011. The temporary regulations also amend 26 CFR part 301 regarding the registration of confidential corporate tax shelters under section 6111.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the time required to prepare or retain the disclosure is minimal and will not have a significant impact on those small entities that are required to provide disclosure. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Danielle M. Grimm and Tara P. Volungis, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301, which were proposed to be amended at 66 FR 41169 (August 7, 2001), are proposed to be further amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6011–4, as proposed at 66 FR 41169 (August 7, 2001), is amended as follows:

1. The heading of § 1.6011–4 is amended by removing the language ''corporate''.

2. The heading of paragraph (a) is revised.

3. Paragraph (a) is amended by adding ''(1) *In general.*'' after the heading.

4. Newly designated paragraph (a)(1) is amended by adding the language

''corporate'' before ''taxpayer'' in the first sentence, and by removing the second sentence and adding three new sentences in its place.

5. Paragraphs (a)(2) and (a)(3) are added.

6. Paragraph (b)(1) is amended by revising the first sentence.

7. Paragraphs (b)(1)(i) and (b)(1)(ii) are added.

8. Paragraph (b)(4)(i) is amended by removing the first sentence.

9. Paragraph (b)(5) *Example 3* is amended by revising the seventh sentence.

10. Paragraphs (c)(1)(iii) and (c)(1)(v) are revised.

11. Paragraph (c)(2) *Example* is amended by adding the language ''*Example.*'' after ''of this section:'' in the first sentence and by adding ''as in effect at that time.'' to the end of the third sentence.

12. Paragraph (d)(1) is revised.

13. Paragraph (e) is amended by removing the language ''corporation's'' in the first sentence and adding ''taxpayer's'' in its place.

14. Paragraph (g) is revised.

The revisions and additions read as follows:

§ 1.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

[The text of the amendments to this proposed section is the same as the text of the amendments to § 1.6011–4T published elsewhere in this issue of the **Federal Register**.]

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

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

Par. 4. Section 301.6111–2, as proposed to be added at 66 FR 41169 (August 7, 2001), is amended as follows:

1. Paragraph (a)(3) is amended by adding four sentences to the end of the paragraph.

2. The heading for paragraph (h) is revised and the entire text after the second sentence is removed and four new sentences are added in their place.

The revision and additions read as follows:

§ 301.6111–2 Confidential corporate tax shelters.

[The text of the amendments to this proposed section is the same as the text of the amendments to § 301.6111–2T published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–15322 Filed 6–14–02; 11:32 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 19 and 27

[FRL—7231–6]

Civil Monetary Penalty Inflation Adjustment Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (''EPA'') proposes to amend the final Civil Monetary Penalty Inflation Adjustment Rule as mandated by the Debt Collection Improvement Act of 1996 to adjust EPA's civil monetary penalties (''CMPs'') for inflation on a periodic basis. The Agency is required to review its penalties at least once every four years and to adjust them as necessary for inflation according to a specified formula. In the ''Rules and Regulations'' section of **Federal Register**, we are publishing the adjustments to EPA's CMPs as a direct final rule without prior proposal because we view this as a noncontroversial adjustment to the CMPs and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by July 18, 2002.

FOR FURTHER INFORMATION CONTACT: David Abdalla, Office of Regulatory Enforcement, Multimedia Enforcement Division, Mail Code 2248A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2413.

SUPPLEMENTARY INFORMATION: This document concerns Civil Monetary Penalty Inflation Adjustment Rule. For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: May 31, 2002.

Christine Todd Whitman,

Administrator, Environmental Protection Agency.

[FR Doc. 02–15191 Filed 6–17–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1356, MB Docket No. 02–142, RM–10436]

Digital Television Broadcast Service; Galveston, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Telemundo of Galveston-Houston License Corporation, licensee of station KTMD–TV, NTSC channel 48 and permittee of DTV station KTMD–DT, DTV channel 47, both licensed to serve Galveston, Texas, requesting the exchange of KTMD's analog and digital allotments. Channel 47 can be substituted for channel 48 at Galveston with a zero offset at coordinates 29–30–24 N. and 94–30–48 W. DTV Channel 48c can be substituted for DTV channel 47 at reference coordinates 29–34–15 N. and 95–30–37 W. with a power of 1000, a height above average terrain HAAT of 599 meters.

DATES: Comments must be filed on or before August 5, 2002, and reply comments on or before August 20, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 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, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Meredith S. Senter, Jr., Leventhal, Senter & Lerman PLLC, 2000 K Street, NW, Suite 600, Washington, DC 20006 (Counsel for Telemundo of Galveston-Houston License Corporation).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–142, adopted June 10, 2002, and released June 14, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Texas is amended by removing channel 48 and adding channel 47 at Galveston.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under Texas is amended by removing DTV channel 47 and adding DTV channel 48c at Galveston.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–15212 Filed 6–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1246; MB Docket No. 02–120, RM–10442; MB Docket No. 02–121, RM–10443; MB Docket No. 02–122, RM–10444; MB Docket No. 02–123, RM–10445; MB Docket No. 02–124, RM–10446; MB Docket No. 02–125, RM–10447; MB Docket No. 02–126, RM–10448; MB Docket No. 02–127, RM–10449; MB Docket No. 02–128, RM–10450]

Radio Broadcasting Services; Amboy, CA; Lone Pine, CA; Roundup, MT; Hartington, NE; Sutton, NE; Wynnewood, OK; Terrebonne, OR; Centerville, TX; and Owen, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes nine allotments in Owen, WI; Hartington, NE; Lone Pine, CA; Terrebonne, OR; Amboy, CA; Sutton, NE; Wynnewood, OK; Roundup, MT; and Centerville, TX. The Commission requests comment on a petition filed by Starboard Broadcasting, Inc. proposing the allotment of Channel 242C3 at Owen, Wisconsin, as the community's first local aural broadcast service. Channel 242C3 can be allotted to Owen in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.9 km (8.0 miles) northeast of Owen at reference coordinates of 45–03–08 North Latitude and 90–29–21 West Longitude. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Comments must be filed on or before July 15, 2002, and reply comments on or before July 30, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners as follows: Steven Gajdosik, Vice President and Director, Starboard Broadcasting, Inc., 2470 Crooks Avenue, Kaukauna, Wisconsin 54130; Jeff Barth, 4937 Heathmoore Court, Louisville, Kentucky 40241; Virgil Todd, 640 South 2nd Street, Unit #4, Louisville, Kentucky 40202; Scott C. Cinnamon (Counsel for Hunt Broadcasting, Inc.), Law Offices of Scott C. Cinnamon, PLLC, 1090 Vermont Avenue, Suite 800, Washington, DC 20005; Marissa G. Repp and F. William LeBeau (Counsel for KHWY, Inc.), Hogan & Hartson, L.L.P., 555 Thirteenth Street, NW., Washington, DC 20004–1109; Allison J. Shapiro and Frank R. Jazzo (Counsel for Sutton Radio Company), Fletcher, Heald, & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209; David P. Garland, 1110 Hackney Street, Houston, Texas 77023; and William J. Edwards, 706 Main, Roundup, Montana 59072.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos 02–120, 02–121, 02–122, 02–123, 02–124, 02–125, 02–126, 02–127, and 02–128, adopted May 15, 2002, and released May 24, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863–2893.

The Commission further requests comment on a petition filed by Jeff Barth proposing the allotment of Channel 232A at Hartington, Nebraska, as the community's first aural broadcast service. Channel 232A can be allotted to Hartington in compliance with the Commission's minimum distance separation requirements with no site restriction at center city reference coordinates of 42–37–21 North Latitude and 97–15–51 West Longitude.

The Commission further requests comment on a petition filed by Virgil Todd proposing the allotment of Channel 249A at Lone Pine, California, as the community's first local broadcast service. Channel 249A can be allotted to Lone Pine in compliance with the Commission's minimum distance separation requirements with no site restriction at center city reference coordinate of 36–36–22 North Latitude and 118–03–43 West Longitude.

The Commission further requests comment on a petition filed by Hunt Broadcasting, Inc. proposing the allotment of Channel 293C2 at Terrebonne, Oregon, as the community's first local aural broadcast service. Channel 293C2 can be allotted to Terrebonne in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.8 km (12.3 miles) southeast of Terrebonne at reference coordinates of 44–14–50 North Latitude and 120–58–39 West Longitude.

The Commission further requests comment on a petition filed by KHWY, Inc. proposing the allotment of Channel 237A at Amboy, California, as the community's first local aural broadcast service. Channel 237A can be allotted to Amboy in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 km (4.6 miles) northeast of Amboy at reference coordinates of 34–36–00 North Latitude and 115–40–52 West Longitude.

The Commission further requests comment on a petition filed by Sutton Radio Company proposing the allotment of Channel 278C2 at Sutton, Nebraska, as the community's first local aural broadcast service. Channel 278C2 can be allotted to Sutton in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.1 km (10.6 miles) west of Sutton at reference coordinates of 40–36–06 North Latitude and 98–03–38 West Longitude.

The Commission further requests comment on a petition filed by David P. Garland proposing the allotment of Channel 266A at Wynnewood, Oklahoma, as the community's second local FM broadcast service. Channel 266A can be allotted to Wynnewood in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.7 km (4.2 miles) east of Wynnewood at reference coordinates of 34–38–23 North Latitude and 97–05–38 West Longitude.

The Commission further requests comment on a petition filed by William J. Edwards proposing the allotment of Channel 248A at Roundup, Montana, as the community's first local aural broadcast service. Channel 248A can be allotted to Roundup in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.0 km (0.6 miles) northeast of Roundup at reference coordinates of 46–26–58 North Latitude and 108–31–44 West Longitude. The proposed allotment will require concurrence by Canada because it is located within 320 kilometers (199 miles) of the Canadian border.

The Commission further requests comment on a petition filed by David P. Garland proposing the allotment of Channel 274A at Centerville, Texas, as the community's third local FM broadcast service. Channel 274A can be allotted to Centerville in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.4 km (3.3 miles) east of Centerville at reference coordinates of 31–14–49 North Latitude and 95–55–23 West Longitude.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Amboy, Channel 237A, and Lone Pine, Channel 249A.

3. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Roundup, Channel 248A.

4. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Hartington, Channel 232A, and Sutton, Channel 278C2.

5. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 266A at Wynnewood.

6. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Terrebonne, Channel 293C2.

7. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 274A at Centerville.

8. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Owen, Channel 242C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.

[FR Doc. 02–15213 Filed 6–17–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2001–11082 Notice 1]

RIN 2127–AH50

Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Withdrawal of advance notices of proposed rulemaking.

SUMMARY: This notice terminates rulemaking in which the agency was considering advanced glazing regulatory requirements for passenger cars and other light vehicles to reduce the risk of ejections in crashes. The agency's research and rulemaking efforts indicate that it is more appropriate for the agency to devote its research and rulemaking efforts to projects other than ejection mitigation through advanced glazing. However, with the advent of other ejection mitigation systems, particularly side air bag curtains, the agency will continue to explore the feasibility of ejection mitigation. The focus will shift from advanced glazing to consideration of more comprehensive, performance-based test procedures. If such procedures are feasible, NHTSA will focus its efforts on establishing safety performance requirements for ejection mitigation that will allow vehicle manufacturers the discretion to choose any technology that fulfills the requirements.

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Mr. John Lee, Office of

Crashworthiness Standards, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–2264. Fax: (202) 366–4329.

For legal issues: Ms. Nancy Bell, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background

A. Prior Agency Rulemaking Efforts

The National Highway Traffic Safety Administration (NHTSA) published two Advance Notices of Proposed Rulemaking (ANPRMs) in 1988 announcing that the agency was considering the proposal of requirements for passenger vehicles intended to reduce the risk of ejections in crashes where the side protection of the vehicle was a relevant factor. In one notice, (53 FR 31712, August 19, 1988) NHTSA considered ejection from passenger cars while in the other notice, (53 FR 31716, August 19, 1988) the agency considered ejection from light trucks. The agency reported in both notices that a significant number of fatalities and serious injuries involved the partial or complete ejection of occupants through the doors or side windows.

NHTSA suggested in both notices that new side window designs, incorporating different glazing/frames, may reduce the risk of ejections. More specifically, the agency discussed the suitability of using either trilaminate windshield-type glass or side glass with an additional inner layer of plastic to mitigate ejection (windshields are already required to contain an inner layer of plastic to mitigate ejection.) The agency also described its development of a method of anchoring these glazings to the window frame by encapsulating the plastic portion of the glazing in a frame, which could be designed to accommodate movable windows. NHTSA suggested one approach to setting a performance requirement for the glazing would require no penetration of the plastic layer of a side window when impacted at 32 km/h (20 mph) with an 18 kg (40 lb) glazing impact device. The glazing impact device was proposed to represent the combined head/shoulder effective mass that would impact the glazing.

Numerous comments were received on the 1988 ANPRMs. Major issues were raised concerning the ANPRMs, primarily that the safety benefits were not quantified. Other comments included: (1) The injury criteria were not specified for side impact, (2) the practicability of glazing designs were questioned and had never been demonstrated, (3) the cost of advanced glazing was high, and (4) no objective and repeatable test procedure was proposed. Finally, the comments questioned the effect that ejection mitigating glazing would have on overall occupant injuries and fatalities, and whether this material would actually increase injuries to belted occupants due to head injury, neck loading, and lacerations.

The National Highway Traffic Safety Administration Authorization Act of 1991 mandated that the agency initiate rulemaking on rollover protection. To fulfill this requirement, the agency published an ANPRM on January 3, 1992 (57 FR 242), soliciting information concerning rollover crashes, to assist the agency in planning a course of action on several rulemaking alternatives. Forty-two comments were received from vehicle manufacturers, safety groups, retailers of aftermarket automotive equipment, automotive consultants, and a concerned citizen. Although most of the comments addressed how to reduce rollover crashes, there were some comments on improved glazing to reduce ejections when rollovers do occur.

Subsequently, a Rulemaking Plan titled ''Planning Document for Rollover Prevention and Injury Mitigation, Docket 91–68 No. 1'' was published for public review on September 29, 1992, (57 FR 44721). This planning document outlined crash avoidance and crashworthiness rulemaking approaches to reduce rollover-related injuries and fatalities. This document included a section concerning ejection mitigation using advanced glazing. Public comments on the glazing program were received from three organizations: Motor Vehicle Manufacturers Association, Chrysler Corporation, and Mitsubishi Motors Corporation (DOT Docket NHTSA–1996–1683). These comments were similar to the comments on the 1988 ANPRMs. The commenters questioned design practicability, the lack of standardized testing, and the potential for additional contact injuries.

B. Agency Advanced Glazing Research

NHTSA continued its research program and, in November 1995, issued a report titled ''Ejection Mitigation Using Advanced Glazings: A Status Report'' (DOT Docket NHTSA–1996–1782). This report documented research, which established the problem size and potential benefits of preventing occupant ejection through the front side windows during automotive crashes. A prototype glazing system, consisting of a modified door and glazing materials, was designed and demonstrated. This glazing system was designed to use higher strength window materials to withstand the force of an occupant impact and to transfer impact forces from the glazing to the door and window frame of the vehicle.

The prototype advanced glazing system was able to successfully retain an 18 kg (40 lb) mass impacting at 24 km/h (15 mph). (Subsequent to the 1988 ANPRMs, this test configuration was determined to be representative of an occupant's effective head/shoulder mass impacting the side glazing during a side impact or rollover event). The prototype glazing system was tested using a variety of window glazing materials (bilaminates, trilaminates, and polycarbonates), to assess a wide range of performance characteristics. Additionally, this research used the FMVSS No. 201 free-motion headform (FMH) to evaluate the potential for head injury to an occupant due to glazing impact. Preliminary testing with the FMH indicated a low potential for head injury from contacts with the prototype glazing system.

A public meeting was held to present and discuss this research program. NHTSA received numerous comments from this public meeting and, based on these comments, extended the research program (DOT docket NHTSA–1996–1782). In November 1999, NHTSA issued a report titled ''Ejection Mitigation Using Advanced Glazings: Status Report II'' (DOT docket NHTSA–1996–1782). This report extended several aspects of the previous research. A more current door/glazing system was evaluated using a variety of glazing materials. HYGE sled tests were conducted to evaluate the potential for neck injury from the use of advanced glazing systems. Additional tests were conducted to evaluate feasibility issues of using the 18 kg (40 lb) and FMH impactor component tests. The benefit-analysis was also updated to include more recent data and to address comments received in response to the previous report.

The results indicated that all but the non-high penetration resistant trilaminates had good potential for providing adequate occupant retention. Impacts into the advanced glazings produced similar potential for head injuries as impacts using the current tempered glass side windows. However, the neck measurements from impacts into glazings were not repeatable. In some cases impacts into advanced glazings resulted in higher neck shear

loads and neck moments than those into tempered glass. Impacts into standard tempered glass resulted in axial loads that were comparable to those into the advanced glazings. For each neck injury measure, the lowest neck injury measurements were obtained from the tempered glass impacts.

On July 19, 2000 (65 FR 44710), NHTSA published a request for comments on the agency's second advanced glazing status report (DOT docket NHTSA–2000–7066). NHTSA received 96 comments from auto manufacturers, suppliers, safety groups, a vehicle extraction specialist, an engineering service, and private individuals. NHTSA has carefully analyzed the information provided in the comments. The automotive manufacturers commented that advanced glazing may induce head, neck and lacerative injuries and recommended that NHTSA focus on occupant containment efforts by means of side curtain air bags. All other commenters believed that advanced glazings would enhance the overall safety performance of vehicles. The private citizens did not provide technical data, but they favored the use of advanced glazing in side and rear windows of vehicles based on their belief that up to 1,300 lives may be saved each year. The manufacturers indicated that advanced glazing benefits assume a 66% belt use rate and the benefits would dramatically decline with increased seat belt use.

II. Agency Decision

In the House of Representatives Conference Report on H.R. 4475, Department of Transportation and Related Agencies Appropriation Act, 2001, Congress noted that NHTSA had been considering the utility of advanced side glazing since 1991, and directed NHTSA to complete and issue a final report on advanced side glazing. In November 2001, NHTSA completed that directive and published a final report, ''Ejection Mitigation Using Advanced Glazing.'' Based on its rulemaking efforts and research documented in the report, NHTSA concludes that there is no reasonable possibility of proposing regulatory requirements for advanced glazing in the foreseeable future due to safety and cost concerns.

Two primary reasons for this conclusion are the advent of other ejection mitigation systems, such as side air curtains and the need to develop performance standards for them, and the fact that advanced side glazing in some cases appears to increase the risk of neck injury. In addition, advanced side glazing would require modifications to, or the addition of, window frames on the side of vehicles and result in smaller side windows. For vehicles with framed windows, NHTSA estimates it would cost between $48 and $79 to modify the two front side windows. However, many vehicles today are produced without framed windows. NHTSA has no cost estimates for modifying windows without frames to accept advanced glazing. In addition, NHTSA has no cost estimates for modifying rear side windows for advanced side glazing. Advanced side glazing would require modifications to the design of all vehicles currently being produced to make their windows smaller, and the costs of such a design modification would be significant.

Given these concerns, NHTSA believes it would be more appropriate to devote its research and rulemaking efforts with respect to ejection mitigation to projects other than advanced glazing. Thus, the agency will not continue to examine a potential requirement for advanced side glazing. The focus will shift from advanced glazing to the development of more comprehensive, performance-based test procedures. If such procedures prove feasible, NHTSA will focus its efforts on establishing the safety performance that must be achieved. For these reasons, NHTSA has decided to terminate rulemaking on the issue of advanced glazing.

Issued on: June 13, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–15356 Filed 6–17–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG96

Endangered and Threatened Wildlife and Plants; Critical Habitat Designation for Two Larkspurs From Coastal Northern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Delphinium bakeri* (Baker's larkspur) and *Delphinium luteum* (yellow larkspur). Approximately 1,786 hectares (ha) (4,412 acres (ac)) are proposed for designation of critical habitat. We are proposing to include approximately 740 ha (1,828 ac) within two units located in Marin and Sonoma counties, California, as critical habitat for *Delphinium bakeri,* and 1,046 ha (2,584 ac) within four units also located in Marin and Sonoma counties, California, as critical habitat for *Delphinium luteum.* Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation and our approaches to handling any future habitat conservation plans. We may revise this proposal prior to final designation to incorporate or address new information received during the comment period.

DATES: We will accept comments until August 19, 2002. Public hearing requests must be received by August 2, 2002.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

You may submit written comments and information or hand-deliver comments to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W—2605, Sacramento, CA 95825.

You may also send comments by electronic mail (e-mail) to *fw1bakers_yellow_larkspur@fws.gov.* See the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wayne White, Field Supervisor, Sacramento Fish and Wildlife Office, at the above address: telephone 916/414–6600; facsimile 916/414–6710.

SUPPLEMENTARY INFORMATION:

Background

Delphinium bakeri is a perennial herb in the buttercup family (Ranunculaceae) that grows from a thickened, tuber-like, fleshy cluster of roots. The stems are

hollow, erect, and grow to 65 centimeters (cm) (26 inches (in)) tall. Shallowly five-parted leaves occur primarily along the upper third of the stem and are green (as opposed to withering) at the time the plant flowers. The flowers are irregularly shaped. The five sepals (members of the outermost set of flower parts) are conspicuous, bright dark blue or purplish, with the rear sepal elongated into a spur (hollow, often cone-shaped, projection). The inconspicuous petals occur in two pairs. The lower pair is oblong and blue-purple; the upper pair is oblique (having unequal sides or an asymmetric base) and white. Seeds are produced in several dry, many-seeded fruits which split open at maturity on only one side (i.e., follicles). *Delphinium bakeri* flowers from April through May (Warnock 1993). *Delphinium bakeri* can be differentiated from other members of the genus by its crenate leaf margins (margins notched or scalloped so as to form rounded teeth), leaves that are not withering at time of flowering, and flowers that are loosely arranged (California Native Plant Society (CNPS) 1977).

Ewan (1942) described *Delphinium bakeri* based on type material collected by Milo Baker in 1939 from ''Coleman Valley, Sonoma Co., California.'' In the most recent treatment, Warnock (1993) retained the taxon as a full species. *Delphinium bakeri* has only been known from three locations—Coleman Valley in southern Sonoma County; near the town of Tomales in northern Marin County, and approximately 10 kilometers (km) (6 miles (mi)) east of Tomales Bay in northern Marin County. *Delphinium bakeri* is thought to have been extirpated from Coleman Valley and from near Tomales. At the only known extant population, approximately 10 km (6 mi) east of Tomales Bay, the number of individuals has varied from 0 to 64 individuals over the last 20 years (CNDDB 2001).

Delphinium bakeri occurs on decomposed shale from 90 to 205 meters (m) (295 to 672 feet (ft)) in elevation (California Natural Diversity Database (CNDDB) 2001). The collection from the type locality in Coleman Valley was described by Joseph Ewan as growing ''along fence rows and in heavy low brush'' (Ewan 1942). Two species listed as growing with *D. bakeri* at the type locality were *Potentilla elata* [now known as *Horkelia californica* ssp. *dissita* (California honeydew)] and *Ranunculus orthorynchus* (straightbeak buttercup) (Ewan 1942). No information is reported for the associated species or habitat for the other occurrence from near Tomales that is thought to be extirpated (CNDDB 2001).

The single extant (currently existing, not extirpated or destroyed) occurrence of *Delphinium bakeri* grows in mesic (moderate moisture) conditions along an extensive north-facing slope under an overstory that includes *Umbellularia californica* (California bay), *Aesculus californica* (California buckeye), and *Quercus agrifolia* (coastal live oak). Other native plants associated with *D. bakeri* at this site include—*Baccharis pilularis* ssp. *consanguinea* (coyotebrush), *Symphorcarpos* cf. *rivularis* (snowberry), *Rubus ursinus* (California blackberry), *Pteridium aquilinum* (braken fern), *Polystichum munitum* (Sword fern), *Pityrogramma triangularis* (goldback fern), *Dryopteris arguta* (coastal woodfern), *Adiantum jordanii* (maidenhair fern), and *Polypodium glycyrrhiza* (licorice fern) (CNDDB 2001). The property is privately owned but Sonoma County has a right-of-way along the road. Pollinators have not specifically been identified for *D. bakeri,* but pollinators for species in the genus *Delphinium* typically are large hymenoptera, especially *Bombus* ssp. (bumblebees) (Guerrant 1976).

Even in 1942, Ewan noted that the habitat of *Delphinium bakeri* was formerly more abundant, but had been reduced by cultivation (Ewan 1942). Habitat conversion, grazing, and roadside maintenance activities have extirpated two of the three known occurrences of *D. bakeri* in Marin and Sonoma counties (CDFG 1994). The type locality is thought to have been extirpated by a dairy ranch. The single extant population is threatened by road work such as right-of-way maintenance (including use of herbicides), overcollection, and sheep grazing (CNDDB 2001). Because of its extreme range restriction to a single population and small population size of the one remaining occurrence, *D. bakeri* is extremely vulnerable to extinction from random natural events, such as unseasonal fire or insect outbreaks (Shaffer 1981; Primack 1993).

Delphinium luteum is a perennial herb in the buttercup family (Ranunculaceae) that grows from thin tuberous roots up to 30 cm (12 in) long to a height of 55 cm (22 in) tall. The leaves are mostly basal, fleshy, and green at the time of flowering. The flowers are cornucopia-shaped. The five conspicuous sepals are bright yellow, with the posterior sepal elongated into a spur. The inconspicuous petals occur in two pairs. The upper petals are narrow and unlobed; the lower petals are oblong to ovate (egg-shaped). The fruit is a follicle. *D. luteum* flowers from March to May. *Delphinium luteum* is distinguished from other *Delphinium* by its yellow flowers and its erect seed follicles (CNPS 1977). In contrast to typical pollinators for the genus *Delphinium,* potential pollinators for *D. luteum* are Allen's hummingbirds, which have been observed visiting *D. luteum* flowers. In addition, the flower shape and sucrose-dominated nectar are consistent with characteristics of species that are typically pollinated by hummingbirds (Guerrant 1976).

Heller (1903) described *Delphinium luteum* based on type material collected from ''grassy slopes about rocks, near Bodega Bay, along the road leading to the village of Bodega'' in Sonoma County. Although Jepson (1975) reduced *D. luteum* to a variety of *D. nudicaule* (red larkspur), it is currently recognized as a full species (Warnock 1993).

Delphinium luteum inhabits coastal prairie and coastal scrub, which typically have no overstory, at elevations ranging from sea level to about 100 m (300 ft) within northwestern Marin and southwestern Sonoma counties, California (CNDDB 2001). The species occurs on moderate to steep slopes with evidence of some level of disturbance, including landslides of various ages, in close proximity (Guerrant 1976, CNDDB 2001). Roots of *D. luteum* are both tuberous, long and thin, an unusual combination in this genus which may provide an advantage in thin, unstable soils (Weaver 1919 as cited in Guerrant 1976). Typical soil types supporting *D. luteum* include the Kneeland series in Sonoma County and the Yorkville series in Marin County. These soils derive from sandstone or shale, and share qualities of rapid runoff and high erosion potential (U.S. Department of Agriculture (USDA) 1972, Soil Conservation Service (SCS) 1985). The most recently documented populations of *D. luteum* (those seen in the 1980's or later) tend to grow on north-facing slopes in canyon complexes with steep sides (LSA Associates (LSA) 1997, CNDDB 2001). Presumably the more shaded north-facing slopes provide a moister microclimate, while the steep-sloped canyon walls increase the likelihood of erosion and landslides in the vicinity. Only two potential exceptions to this trend are evident in the CNDDB: one population near Tomales, California, is mapped on a south-facing slope, while a relatively nearby population does not appear to grow near any steep-sloped canyon walls. Both these populations are in proposed critical habitat Unit L4,

described below. The first population has not been documented since 1983, and its mapped location is precise to a one-fifth mile (0.32 km) radius. This could put its actual location across the canyon on a north-facing slope. The other population is growing in a road cut, which might provide erosional and soil disturbance characteristics similar to those near canyon walls (CNDDB 2001).

Temperatures in the region inhabited by *Delphinium luteum* are moderated by fog, which keeps summers relatively cool and winters relatively warm compared to inland habitats. Much of the coastal prairie in this species' range has been grazed for over a century, and is now characterized by a mixture of non-native annuals and forbs and native prairie plants. Native plants listed as occurring with *D. luteum* include *Arabis blepharophylla* (rose rockcress), *Calochortus tolmei* (Tolmei startulip), *Mimulus aurantiacus* (orange bush monkeyflower), *Dudleya caespitosa* (sea lettuce), *Polypodium californicum* (California polyploidy), and *Eriogonum parviflorum* (sea cliff buckwheat) (CNDDB 2001).

Eleven occurrences of *Delphinium luteum* have been reported in the CNDDB (2001). Only six of these have been documented since the early 1980's, however. Of the remaining five occurrences, three have not been documented since 1935 or earlier, another is based entirely on unsupported and undated information found on a 1979 map, and the fifth was a questionable identification never confirmed by a second siting (CNDDB 2001). The six more recently documented occurrences grow in three separate drainages; one in Sonoma County and two in Marin County. These groupings form the basis of three of the four critical habitat units we are proposing. (See Units L1, L2 and L4, below). A final population, not yet documented in CNDDB, occurs in a third Marin County drainage (David Amme, California Department of Transportation, *in litt.* 2002; D. Amme, pers. comm. 2002), and forms the basis of critical habitat Unit L3, as described below.

Recent surveys have not found many plants in any of these populations. The largest number recorded by CNDDB is 134 plants for one of the Marin County populations in 1993. The total number of *Delphinium luteum* individuals may be less than 300 (CNDDB 2001, David Amme, pers. comm. 2002). Each recently documented population faces one or more potential threats to its existence, including overcollection, road widening, unmanaged sheep grazing, fire suppression, and hybridization with another *Delphinium* species (B. Guggolz, pers. comm. 1995; CNDDB 2001). Additionally, the combination of few populations, small numbers of individuals within each population, narrow range, and restricted habitat makes *D. luteum* susceptible to extirpation in significant portions of its range from random natural events such as unseasonal fire, drought, disease, or other natural occurrences (Shaffer 1981; Primack 1993).

Previous Federal Action

Federal actions on the two plant species began when the Secretary of the Smithsonian Institution, as directed by section 12 of the Act, prepared a report on those native U.S. plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51), was presented to Congress on January 9, 1975, and included *Delphinium bakeri* and *D. luteum* as endangered. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and of our intention to review the status of the plant taxa named in the report. On June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) determining approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Delphinium bakeri* and *D. luteum* were included in this June 16, 1976, **Federal Register** document.

In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposed rules already more than 2 years old. On December 10, 1979, we published a notice (44 FR 70796) of the withdrawal of the portion of the June 16, 1976, proposed rule that had not been made final, along with four other proposals that had expired. We published an updated Notice of Review (NOR) for plants on December 15, 1980 (45 FR 82480). This NOR included *Delphinium bakeri* and *D. luteum* as category 1 candidates (species for which data in our possession was sufficient to support proposals for listing).

On February 15, 1983, we published a notice (48 FR 6752) of our prior finding that the listing of *Delphinium bakeri* and *D. luteum* was warranted but precluded in accordance with section 4(b)(3)(B)(iii) of the Act as amended in 1982. Pursuant to section 4(b)(3)(C)(i) of the Act, this finding must be recycled annually, until the species is either proposed for listing or the petitioned action is found to be not warranted. Each October from 1983 through 1994, further findings were made that the listing of *D. bakeri* and *D. luteum* were warranted, but that the listing of these species was precluded by other pending proposals of higher priority.

On November 28, 1983, we published a supplement to the plant NOR (48 FR 53640). This supplement changed *Delphinium bakeri* and *D. luteum* from category 1 to category 2 candidates (species for which data in our possession indicate listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules).

The plant NOR was revised again on September 27, 1985 (50 FR 39526). *Delphinium bakeri* and *D. luteum* were again included as category 2 candidates. Another revision of the plant NOR was published on February 21, 1990 (55 FR 6184). In this revision *D. bakeri* and *D. luteum* were included as category 1 candidates and remained as category 1 candidates in the plant NOR published on September 30, 1993 (58 FR 51144). Upon publication of the February 28, 1996, NOR (61 FR 7596), we ceased using category designations and included *D. bakeri* and *D. luteum* as candidate species. Candidate species are those for which we have on file sufficient information on the biological vulnerability and threats to support proposals to list them as threatened or endangered. On June 19, 1997, we published a proposed rule in the **Federal Register** (62 FR 33383) to list *D. bakeri* and *D. luteum* as endangered.

On June 17, 1999, our failure to issue final rules for listing *Delphinium bakeri* and *D. luteum* and seven other plant species as endangered or threatened, and our failure to make a final critical habitat determination for the nine species was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *U.S. Fish and Wildlife Service and Bruce Babbitt* (Case No. C99–2992 (N.D.Cal.). The final rule listing *D. bakeri* and *D. luteum* as endangered species was published in the **Federal Register** on January 26, 2000 (65 FR 4156). On May 22, 2000, the judge signed an order for the Service to propose critical habitat for the species by September 30, 2001. In mid-September 2001, plaintiffs agreed to an extension of this due date for *D. bakeri* and *D. luteum* until June 10, 2002, for the proposed critical habitat designation and March 10, 2003, for the final critical habitat designation.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, 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 (ii) specific areas outside the geographical area occupied by a species at the time it is listed in accordance with section 4 of this Act, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Section 7(a)(2) of the Act requires Federal agencies to consult with the Service to insure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of habitat determined to be critical to a species. Section 7 of the Act also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 of the Act requires that we designate critical habitat at the time of listing, to the extent such habitat is determinable at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we often may not have sufficient information to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life-cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will attempt to not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), which provide essential life-cycle needs of the species. However, we may be restricted by our minimum mapping unit or mapping scale.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should, at a minimum, be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments or other unpublished materials, and discussions with experts.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas that support newly discovered populations in the future, but are outside the critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act and regulations at 50 CFR 424.12, we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Delphinium bakeri* and *D. luteum.* We reviewed available information that pertains to the habitat requirements of these species including data from research and survey observations; regional Geographic Information System (GIS) coverages (*e.g.,* soils, known locations, vegetation, land ownership); information from herbarium collections such as CalFlora ((http://www.calflora.org); data from CNDDB

(2001); and data collected from project-specific and other miscellaneous reports submitted to us. This included information from our final rule listing *D. bakeri* and *D. luteum* as endangered (65 FR 4156), the CNDDB (2001), soil survey maps (Soil Conservation Service 1972, 1985), certified soil GIS layers for Marin County, geologic formation maps, 1993 digital orthophotoquarterquads, and discussions with botanical experts who have worked closely with these plant species. We also conducted site visits at one historical occurrence of *D. bakeri* and five historical occurrences of *D. luteum;* and one extant occurrence of *D. bakeri* and three extant occurrences of *D. luteum* (to the extent we could visit the habitat without going onto private land).

Mapping

We delineated the proposed critical habitat units by using data layers in a GIS format with all the known *Delphinium bakeri* and *D. luteum* occurrences from the CNDDB (2001) and other sources (D. Amme, *in litt.* 2002; D. Amme, pers. comm. 2002). We created additional data layers to reflect vegetation types using aerial photographs, GIS data for Marin soils (Natural Resource Conservation Service (NRCS) 2001), and recent development using satellite imagery (CNES/SPOT Image Corporation (SPOT) 2001). We created an additional data layer by digitizing Kneeland soils data for Sonoma County from USGS 1972. These data layers were laid over a base of USGS 3.75′ digital orthophotographic quarter quadrangle images.

In selecting areas of proposed critical habitat, we made an effort to avoid developed areas such as houses, intensive agricultural areas such as row crops, vineyards and orchards, and lands unlikely to contain the primary constituent elements for *Delphinium bakeri* or *D. luteum.* However, we did not map critical habitat in sufficient detail to exclude all developed areas. Developed areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 of the Act consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to—space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. All areas proposed as critical habitat for *Delphinium bakeri* and *D. luteum* are within the historical range and contain one or more of these physical or biological features (primary constituent elements) essential for the conservation of the species.

Much of what is known about the specific physical and biological requirements of *Delphinium bakeri* and *D. luteum* is described in the Background section of this proposed rule. The proposed critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *D. bakeri* and *D. luteum* throughout their ranges and to provide those habitat components essential for the conservation of these species. These habitat components provide for—(1) Individual and population growth, including sites for germination, pollination, reproduction, and seed dispersal; (2) areas that allow gene flow and provide connectivity or linkage between populations including open spaces and disturbed areas that in some instances may also contain non-native plant species; (3) areas that provide basic requirements for growth such as water, light, minerals; and (4) areas that support populations of pollinators and seed dispersal organisms.

The conservation of *Delphinium bakeri* and *D. luteum* is dependent upon a number of factors, including the conservation and management of sites where existing populations grow, the establishment of *D. bakeri* at a new location to provide insurance against stochastic (randomly occurring) events, the maintenance of normal ecological functions within these sites, and the preservation of the connectivity between sites to maintain recent levels of gene flow between sites through pollinator activity and seed dispersal agents.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Delphinium bakeri* consist of:

(1) Soils that are derived from decomposed shale;

(2) Plant communities that support associated species, including, but not limited to: *Umbellularia californica* (California bay), *Aesculus californica* (California buckeye), and *Quercus agrifolia* (coastal live oak). Other native plants associated with *D. bakeri* include—*Baccharis pulularis* ssp. *consanguinea* (coyotebrush), *Symphorcarpos* cf. *rivularis* (snowberry), *Rubus ursinus* (California blackberry), *Pteridium aqulinum* (braken fern), *Polystichum munitum* (Sword fern), *Pityrogramma triangularis* (goldback fern), *Dryopteris arguta* (coastal woodfern), *Adiantum jordanii* (maidenhair fern), and *Polypodium glycyrrhiza* (licorice fern); and

(3) Mesic (moderate moisture) conditions on extensive north-facing slopes.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Delphinium luteum* consist of:

(1) Plant communities that support the appropriate associated species, including north coastal scrub or coastal prairie communities;

(2) Soils derived from sandstone or shale, with rapid runoff and high erosion potential, such as Kneeland or Yorkville series soils;

(3) Generally north aspected areas near steep-sloped canyon walls; and

(4) Habitat upslope and downslope from known populations to maintain disturbance such as occasional rock slides or soil slumping that the species appears to require.

Criteria Used to Identify Critical Habitat

We identified critical habitat areas essential for the conservation of *Delphinium bakeri* in the one location it currently is known to occur in Marin County, as well as in the Coleman Valley area in Sonoma County, where the species was historically found. We are including the Coleman Valley site in our proposal, despite the fact that *D. bakeri* is thought to be extirpated from this location because it is one of very few locations where *D. bakeri* has ever been observed. We did not include the third such location near Tomales, California, however, because our information is too vague to accurately identify the site. We believe that reintroduction of *D. bakeri* at the Coleman Valley site (Unit B1) is essential for the species' survival due to the extremely limited range of *D. bakeri,* its small population size (0 to 64 individuals over the last 20 years), and the high degree of threat from chance

catastrophic events (Shaffer 1981, 1987; Primack 1993, Meffe and Carroll 1994). Such events are a concern when the number of populations or geographic distribution of a species is severely limited, as is the case with *D. bakeri.* Establishment of a second location for *D. bakeri* is important in reducing the risk of extinction due to such catastrophic events.

We identified critical habitat for *Delphinium bakeri* by mapping the distribution of the known occurrences of the species with respect to distance from the coast, location within watersheds, soil series associations, aspect of the slopes and watersheds, position on slopes, our field observations of the soil conditions at each location, and our field observations of the plant associations found in the area of each location. We then drew an initial critical habitat demarcation that included the appropriate soils, vegetation, and watershed. We mapped the proposed units to include the upslope and downslope areas that would be important to the maintenance of the primary constituent elements essential for the conservation of the species.

We identified critical habitat areas essential to the conservation of *Delphinium luteum* in the areas where it is known to occur in Marin and Sonoma counties. Due to the limited number of populations of *D. luteum* and the high degree of threat from catastrophic events, we believe that all areas with recently documented occurrences are essential for the conservation of this species. In addition, the Center for Plant Conservation (2002) recommends that additional populations be established and managed for this species. Some areas within the proposed critical habitat units may be suitable sites for such introductions. All four *D. luteum* units (L1, L2, L3 and L4) are occupied by the species.

Five of the six proposed critical habitat units for *Delphinium bakeri* and *D. luteum* contain at least one extant occurrence of the species for which the unit was drawn. All of the units also contain areas that are currently considered unoccupied or that are of uncertain occupancy. These unoccupied areas are included within the units because they provide areas into which populations might expand, provide connectivity or linkage between populations within a unit, maintain ecological and landscape processes upon which the species depend, and support populations of pollinators and seed dispersal organisms. They also provide areas into which the species may be introduced. As discussed above, we believe that establishing a second location for *D. bakeri* is essential for the conservation of the species because it will reduce the probability that the plant may be extirpated by catastrophic events. The one unoccupied unit proposed encompasses the type location (Colman Valley location) for *D. bakeri.* We believe that this is appropriate, when considering establishment of new locations, to look first to areas where the species was once known to occur, rather than to completely new areas. Establishment of additional *D. luteum* locations has been recommended by the Center for Plant Conservation (2002).

As a rule, we drew boundary lines for *Delphinium luteum* critical habitat units to include all areas of the same soil type and in the same canyon system as the enclosed population(s). Although all but one recently documented population of *D. luteum* occurs on basically north-facing slopes, we consistently included as critical habitat both sides of the canyons which contain *D. luteum.* This was because the folds and side canyons common to these sites can produce localized north aspected areas even on generally south aspected canyon walls. Including both sides of the canyons where the plant occurs can also make management of the units easier, and provide a wider range of microhabitats for potential population expansion.

Some units contained features which caused us to modify our general rule of drawing boundaries based on the same soil type and canyon system as the known population. In Unit L3, the soil boundaries conformed well to the canyon boundaries, and also included areas of steep-sloped canyon walls, so no further manipulation was necessary. Unit L1 soil boundaries included several branching canyons with numerous coastal drainage outlets, so we included those canyons which drained to roughly the same location and excluded the others. In Unit L2, the soil boundaries conformed well to the drainage, but because the area thus enclosed was very small and unbranched, and because the same soil type also occurred with suitable habitat in a separate drainage less than half a mile away, we extended the boundaries of the unit to include the north-facing slopes of the second drainage as bounded by the suitable soil type. The resulting unit is still the smallest of the four, and by including this small area of nearby habitat we can provide the resident *D. luteum* population an opportunity to colonize a new area. Given the susceptibility of *D. luteum* populations to extirpation by random, uncontrollable events, the establishment of new populations is essential to the continuing survival of the species.

Unit L4 contains the population growing in a road-cut away from steep-sloped canyon walls, as well as the population mapped on a south-facing slope. It also includes a third population which is located in typical habitat but which the CNDDB lists as ''possibly extirpated'' due to the inability of several surveys to relocate it since 1982. All three populations are mapped as growing on different soil types (CNDDB 2001). However, with two exceptions, all soil types in the area share the rapid run-off and high erosion potential with which *D. luteum* is associated. The two exceptions are the canyon floor and a small area at the head of the canyon where the walls are not steeply sloped. We are including these areas for contiguity of the unit and because both of them abut the location of the population located in the road cut. Taken together, the various soil types conform well to the main canyon boundaries (SCS 1985) and include all the habitat requirements of the species, so we have drawn Unit L4 largely according to the soil boundaries as they extend down the main canyon. We did not extend the unit up either of two large side canyons because those areas neither contain *D. luteum* populations nor a soil type common to all the populations in the unit.

Special Management Considerations

As noted in the Critical Habitat section, ''special management considerations or protection'' is a term that originates in the definition of critical habitat. We believe the proposed areas may require special management considerations or protection because *Delphinium bakeri* and *D. luteum* occupy an extremely localized range. Potential threats to the habitat of *D. bakeri* include overcollection, application of herbicides, and sheep grazing. Potential threats to the habitat of *D. luteum* include overcollection, road widening, sheep grazing, fire suppression and hybridization.

Additional special management is not required if adequate management or protection is already in place. Adequate special management considerations or protection is provided by a legally operative plan or agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. Currently, no plans meeting these criteria have been developed for *Delphinium bakeri* or *D. luteum.*

Special management considerations or protections may be needed to maintain the primary constituent elements for *Delphinium bakeri* or *D. luteum* within the units being proposed as critical habitat. In some cases, protection of the existing habitat and current ecological processes may be sufficient to ensure that populations of the plants are maintained at those sites, and that they have the ability to reproduce and disperse in surrounding habitat. In other cases, however, active management may be needed to maintain the primary constituent elements for the two *Delphinium* species. We have outlined below the most likely kinds of special management and protection that these taxa may require. The following actions apply to both *Delphinium* species, unless otherwise noted.

(1) In all plant communities where these taxa occur, invasive, nonnative species need to be actively controlled.

(2) The quality of water must be maintained to keep it free from deleterious levels of herbicides or other chemical or organic contaminants.

(3) Certain areas where these species occur may need to be fenced to protect them from accidental or intentional trampling by humans and livestock.

(4) Aerial application of herbicides and insecticides need to be curtailed in the critical habitat. Exposure from drift needs to be avoided.

(5) The appropriate level of soil disturbance needs to be maintained (this applies only to *Delphinium luteum*).

(6) Existing hydrologic conditions may need to be protected by avoiding activities that cause a change in surface or subsurface water flows.

Proposed Critical Habitat Designation

The proposed critical habitat areas described below constitute our best assessment at this time of the areas needed for the conservation of *Delphinium bakeri* and *D. luteum.* Critical habitat being proposed for *D. bakeri* includes one occupied unit in Marin County, which contains the only currently known location of *D. bakeri* and a second unit in Sonoma County we believe includes the type locality for *D. bakeri.* The second unit is essential because establishment of a second location for *D. bakeri* is important in reducing the risk of extinction due to catastrophic events. Critical habitat being proposed for *D. luteum* includes four units that currently are occupied. These units together contain all the *D. luteum* populations documented since the 1980's. Critical habitat proposed for *D. bakeri* includes 740 ha (1,828 ac), with 418 ha (1,032 ac) in Marin County and 322 ha (796 ac) in Sonoma County. Critical habitat proposed for *D. luteum* includes 1,046 ha (2,584 ac), with 554 ha (1,369 ac) in Sonoma County and 492 ha (1,215 ac) in Marin County.

Delphinium bakeri and *D. luteum* are known only to occur on private lands. We are not aware of any Tribal lands in or near our proposed critical habitat units for *D. bakeri* and *D. luteum.* However, should we learn of any Tribal lands in the vicinity of the critical habitat designation subsequent to this proposal, we will coordinate with the Tribes before making a final determination as to whether any Tribal lands should be included as critical habitat for *D. bakeri* or *D. luteum.*

A brief description of each unit and our reasons for proposing those areas as critical habitat are presented below.

Unit B1: Coleman Valley, Sonoma County, California

This unit is located near Coleman Valley Road west of the town of Occidental, approximately 8.3 km (5 mi) from the coast. The 322 ha (796 ac) unit is bounded on the north side by Coleman Valley Road and represents an area either near or at the original type locality for *Delphinium bakeri.* The location of the type locality for *D. bakeri* was somewhat vague, and only identified the location as Coleman Valley. However, this unit contains an extensive north-facing slope with mesic vegetation similar to the extant location of *D. bakeri,* with the addition of coastal redwood. The Coleman Valley location of *D. bakeri* represented the northern most extent of the range of this species. As discussed above, this unit is essential for the conservation of *D. bakeri* because it provides a second area separate from the existing population for *D. bakeri* into which it can be reintroduced. We believe it is important to have a second unit to reduce the likelihood that the species may become extinct as the result of a catastrophic event. A second geographically separate unit can provide protection from chance events such as disease that can destroy the only remaining population.

Unit B2: Salmon Creek, Marin County, California

This unit is near the Marshall-Petaluma Road in Marin County approximately 10 km (6 mi) from the coast. This 418 ha (1,032 acre) unit is bounded on the north side by Salmon Creek and contains an extensive north-facing slope that is essential to maintaining the mesic conditions needed for *Delphinium bakeri.* Land in this unit is privately owned with a County right-of-way along the road. This unit is essential for the survival of *D. bakeri* because it contains the only known extant occurrence of *D. bakeri* and represents the southernmost extent of the range of this species.

Unit L1: Bodega Bay, Sonoma County, California

Unit L1 consists of 554 ha (1,369 ac) south of Bay Hill Road, near the town of Bodega in Sonoma County, California. This unit is comprised of Kneeland series soils, coastal prairie and scrub habitat, and is within the fog belt that moderates the climate. This unit is essential to the conservation of *D. luteum* because it contains about thirty percent of the roughly 220 total remaining individual plants (based on the most recent population totals provided by CNDDB and by the discoverer of the Unit L3 population (CNDDB 2001; D. Amme, pers. comm. 2002)). Because so few *D. luteum* plants remain, all are essential to the continued survival and recovery of the species. In addition, this unit is important to the conservation of the species because it contains two of very few remaining sites at which the species has been recently observed. Due to the limited number of populations of *D. luteum* and the high degree of threat from catastrophic events, we believe that all recently documented occurrences are essential for the conservation of this species.

Unit L2: Estero Americano, Marin County, California

Unit L2 is located just south of Estero Americano on the Marin County coast. This 133 ha (328 ac) unit contains one occurrence of *Delphinium luteum,* with about 134 individual plants at last count (CNDDB 2001). It is located on Yorkville series soils that support coastal prairie and coastal scrub habitat, and is within the fog belt that moderates the climate. This unit is essential for the survival of *D. luteum* because it contains the single largest population of the plant, with more than half of all the individuals in the entire species. Because so few *D. luteum* plants remain, all are essential to the continued survival and recovery of the species. In addition, this unit is important to the conservation of the species because it contains one of very few remaining sites at which the species has been recently observed. Due to the limited number of populations of *D. luteum* and the high degree of threat from catastrophic events, we believe that all recently documented occurrences are essential for the conservation of this species.

Unit L3: Estero de San Antonio, Marin County, California

Unit L3 is located near the mouth of the Estero de San Antonio in Marin County, and includes steep sloped canyon walls composed of Yorkville series soils on both sides of the water channel, with coastal prairie and coastal scrub habitat and temperatures moderated by fog. This 166 ha (411 ac) unit contains one population of *Delphinium luteum* discovered in 1993 and not yet recorded in the CNDDB. This unit is important because it contains a recently documented but little known population, and its position roughly halfway between Unit L4 to the south and Units L1 and L2 to the north may help to prevent the genetic isolation of Unit L4. It also contains the largest continuous area of Yorkville soils of all the units. Yorkville soils are important because, between units L2 and L3, these soils support roughly two thirds of all individual *D. luteum* plants. Because a large proportion of the remaining *D. luteum* individuals occur on Yorkville soils, we believe these soils are an indicator of situations in which the plants are likely to survive and reproduce. Therefore, we believe it is important to protect areas which contain these soils.

Unit L4: Tomales, Marin County, California

Unit L4 is located approximately 1.4 km (1 mi) south of the town of Tomales in Marin County. This 193 ha (476 ac) unit consists of coastal prairie and coastal scrub within the fog belt. It contains three populations of *Delphinium luteum,* but two of the populations have not been documented since the early 1980's and one of these has been listed as ''possibly extirpated'' by the CNDDB. The ''possibly extirpated'' population may also have actually consisted of hybrids of *D. luteum* and *D. nudicaule* (red larkspur). The third population occurs on a road embankment rather than in the vicinity of canyon walls. This population was documented as recently as 2000, and was genetically tested and confirmed to be a non-hybrid, but only one plant was seen at that time (CNDDB 2001). This unit is important to the conservation of the species because it contains one of very few remaining sites at which the species has been recently observed. Due to the limited number of populations of *D. luteum* and the high degree of threat from catastrophic events, we believe that all recently documented occurrences are essential for the conservation of this species. In addition, this unit is important because it represents the southernmost extent of the range of *D. luteum.* The population growing in the road embankment may also provide important information on the characteristics of managed soil disturbances which can support *D. luteum.* Such information would be of great help in recovering the species.

TABLE 1.—APPROXIMATE AREAS OF PROPOSED *Delphinium bakeri* AND *D. luteum* CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP

Species (unit)	Private	Total
D. bakeri (B1)	322 ha (796 ac)	322 ha (796 ac)
D. bakeri (B2)	418 ha (1,032 ac)	418 ha (1,032 ac)
D. luteum (L1)	554 ha (1,369 ac)	554 ha (1,369 ac)
D. luteum (L2)	133 ha (328 ac)	133 ha (328 ac)
D. luteum (L3)	166 ha (411 ac)	166 ha (411 ac)
D. luteum (L4)	193 ha (476 ac)	193 ha (476 ac)

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent

alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect *Delphinium bakeri* or *D. luteum* or their critical habitat will require section 7 of the Act consultation. Activities on private, State, county, or lands under local jurisdictions requiring a permit from a Federal agency, such as a permit from the Corps under section 404 of the Clean Water Act, a section 10(a)(1)(B) of the Endangered Species Act permit from the Service, or some other Federal action, including funding (*e.g.,* Federal Highway or Federal Emergency Management Act funding), will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for both the conservation of *Delphinium bakeri* or *D. luteum.* Within critical habitat, this pertains only to those areas containing the primary constituent elements. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency may directly or indirectly destroy or adversely modify critical habitat for *Delphinium luteum* or *D. bakeri* include, but are not limited to:

(1) Ground disturbances which destroy or degrade primary constituent elements of the plant (*e.g.,* clearing, tilling, grading, construction, road building, mining, etc.);

(2) Activities which directly or indirectly affect *Delphinium bakeri* or *D. luteum* plants (*e.g.,* herbicide application, heavy off-road vehicle use, introductions of non-native herbivores, significant unmanaged grazing during times when *D. bakeri* or *D. luteum* is producing flowers or seeds, etc.);

(3) Activities which significantly degrade or destroy *Delphinium bakeri* pollinator populations (*e.g.,* pesticide applications); and

(4) Activities that would appreciably change the rate of erosion of soils for *Delphinium luteum* such as slope stabilization; residential and commercial development, including road building and golf course installation; and vegetation manipulation such as clearing and grubbing upslope from *D. luteum.*

Designation of critical habitat could affect the following agencies or actions—development on private lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers or permits from other Federal agencies such as Housing and Urban Development, authorization of release of biological control agents by the U.S. Department of Agriculture, road construction by Federal Highway Administration, watershed management activities of the Natural Resource Conservation Service, and authorization of Federal grants or loans.

Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure a permit to take according to section 10(a)(1)(B) of the Act would be subject to take authorization within the Service's internal section 7 consultation on the habitat conservation plan. Other listed species that occur in the same general area as the *Delphinium luteum* include the Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*) and the California red-legged frog (*Rana aurora draytonii*).

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–6131; FAX 503/231–6243).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Currently, no habitat conservation plans (HCPs) exist that include *Delphinium bakeri* or *D. luteum* as covered species. Subsection 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances, the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although ''take'' of listed plants is not prohibited by the Act, listed plant species may also be covered in an HCP for wildlife species.

In the event that future HCPs covering *Delphinium bakeri* or *D. luteum* are developed within the boundaries of the designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of these species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *D. bakeri* or *D. luteum.* The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks.

We will provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *Delphinium bakeri* or *D. luteum* and appropriate management for those lands. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit

issuance will not destroy or adversely modify critical habitat.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day public comment period on the draft economic analysis and proposed rule at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Delphinium bakeri* and *D. luteum* and their habitats, and which habitats are essential to the conservation of these species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *Delphinium bakeri* and *D. luteum* such as those derived from non-consumptive uses (*e.g.,* hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs); and

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods: (1) You may submit written comments and information to the Field Supervisor at the address provided in the **ADDRESSES** section above; (2) You may also comment via the electronic mail (e-mail) to *bakers_yellow_larkspur@fws.gov.* Please submit e-mail comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: [1018–AG96] and your name and return address in your e-mail message.'' If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at phone number (916) 414–6600. Please note that the Internet address *bakers_yellow_larkspur@fws.gov* will be closed out at the termination of the public comment period; and (3) You may hand-deliver comments to our Sacramento office (see **ADDRESSES** section above).

Our practice is to make comments available for public review during regular business hours, including names and home addresses of respondents. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of this review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made within 45 days of the date of publication of this proposal within the **Federal Register**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant

rule and was reviewed by the Office of Management and Budget (OMB). The Service is preparing a draft economic analysis of this proposed action. The Service will use this analysis to meet the requirement of section 4(b)(2) of the ESA to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of *Delphinium bakeri* or *D. luteum*. This analysis will be available for public comment before finalizing this designation. The availability of the draft economic analysis will be announced in the **Federal Register**.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

This discussion is based upon the information regarding potential economic impact that is available to the Service at this time. This assessment of economic effect may be modified prior to final rulemaking based upon development and review of the economic analysis being prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect the position of the Service on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

We must determine whether the proposed rulemaking will affect a substantial number of small entities. Small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. If the proposed rulemaking will affect a substantial number of small entities, we must determine if there will be a significant economic impact on them.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.,* housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where these species are present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Delphinium bakeri* or *D. luteum*. If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where these species are present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, we have only completed one conference and one consultation on *Delphinium bakeri* and *D. luteum* since they were proposed for listing. As a result, the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities.

When the species are clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act. Because *Delphinium bakeri* and *D. luteum* have been listed only a relatively short time and there have been few activities with Federal involvement in these areas during this time, there is not a detailed history of consultations based on the listing of these species. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designation.

No Federal lands are included in this proposed critical habitat designation, so this rule will not affect any small entities involved in grazing or other activities on Federal lands. On private lands, activities that lack Federal involvement would not be affected by the critical habitat designation. Current activities of an economic nature that occur on private lands in the area encompassed by this proposed designation are primarily agricultural, such as livestock grazing and farming. Because these areas are zoned rural and not near cities or towns, multiple-unit residential or commercial development is unlikely. Therefore, Federal agencies such as the Economic Development Administration, which is occasionally involved in funding municipal projects elsewhere, is unlikely to be involved in projects in these areas. In rural regions of Sonoma and Marin counties, previous consultations under section 7 of the Act between us and other Federal agencies

most frequently involved the U.S. Army Corps of Engineers (ACOE) or the Federal Highway Administration (FHWA). In FHWA consultations, the applicant is either the California State Department of Transportation or the County, neither of which is considered a small entity as defined here. The ACOE consultations involve wetlands or waterways and occur due to the presence of species (or their critical habitat) that spend at least part of their life in aquatic habitats. *Delphinium bakeri* and *D. luteum* are upland plant species and unlikely to be the subject of consultations with the ACOE, unless the project is very large and would include wetlands otherwise not associated with these species. In agricultural areas, the Natural Resources Conservation Service (NRCS) occasionally funds activities on farms or ranches that require consultation with us. We have not had any formal consultations with the NRCS on this type of project within Marin or Sonoma counties over the past 5 years. Sonoma and Marin counties encompass about 1.3 million acres of land and support over 35 listed species. Based on the low level of past activity, we expect few consultations with the NRCS or other Federal agencies on the 4,412 acres of non-Federal lands proposed in this rule. For these reasons, the Service determines that the number of small entities likely to be affected by this rule will not be substantial.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or would result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize adverse effect to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to gather information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for *Delphinium bakeri* and *D. luteum* we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats they face, especially as described in the final listing rule and in this proposed critical habitat designation, as well as our experience with similar listed plants in California. In addition, the State of California listed *D. bakeri* and *D. luteum* as rare species under the California Endangered Species Act in 1978, and we have also considered the kinds of actions required through State consultations for this species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species, restoration of degraded habitat, construction of protective fencing, and regular monitoring. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of small entities. The entire designation likely involves fewer than 100 privately owned parcels; many of these parcels are located in areas where likely future land uses are not expected to result in Federal involvement or section 7 consultations. As discussed earlier, most of the private parcels within the proposed designation are currently being used for agricultural purposes and, therefore, are not likely to require any Federal authorization. In the remaining areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under this rule—would be limited to a subset of the area proposed. The most likely Federal involvement could include ACOE permits, permits we may issue under section 10(a)(1)(B) of the Act, FHWA funding for road improvements, and voluntary watershed management and restoration project funding by NRCS.

This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. We anticipate that the kinds of reasonable and prudent alternatives that we would provide can usually be implemented at low cost. Therefore, we are certifying that the proposed designation of critical habitat for *Delphinium bakeri* and *D. luteum* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis we will determine whether designation of critical habitat would cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on

regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

The Service will use the economic analysis to evaluate consistency with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the two *Delphinium* species from Marin and Sonoma counties, California in a preliminary takings implication assessment. This preliminary assessment concludes that this proposed rule does not pose significant takings implications. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with the Department of the Interior policy, we requested information from, and coordinated development of this critical habitat designation with, the appropriate State resource agencies in California. Where the species are present, the designation of critical habitat imposes no additional restrictions to those currently in place, and therefore, has little environmental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur it may assist these local governments in long range planning (rather than waiting for case-by-case section 7 consultation to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the principal constituent element within the designated areas to assist the public in understanding the habitat needs of *Delphinium bakeri* and *D. luteum.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

We have determined we do not need to prepare an Environmental Assessment or an Environmental Impact Statement, as defined by the National Environmental Policy Act of 1969 with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have determined that there are currently no Tribal lands essential for the conservation of *Delphinium bakeri* or *D. luteum* because they do not support populations, nor do they provide essential habitat. Therefore, critical habitat for *D. bakeri* and *D. luteum* has not been designated on Tribal lands.

References Cited

A complete list of all references cited herein is available upon request from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section)

Author

The primary authors of this proposed rule are staff of the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) revise the entries for ''Delphinium luteum'' and for ''Delphinium bakeri,'' under ''FLOWERING PLANTS,'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
Delphinium bakeri	Baker's larkspur	U.S.A. (CA)	Ranunculaceae	E	681	17.96(b)	NA
Delphinium luteum ...	Yellow larkspur	U.S.A. (CA)	Ranunculaceae	E	681	17.96(b)	NA
*	*	*	*	*	*	*	

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, amend paragraph (b) by adding critical habitat for *Delphinium bakeri* and for *Delphinium luteum* in alphabetical order under Family Ranunculaceae to read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

(b) * * *

Family Ranunculaceae: *Delphinium bakeri* (Baker's larkspur)

(1) Critical habitat units are depicted for Sonoma and Marin counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Delphinium bakeri* are the habitat components that provide:

(i) Soils that are derived from decomposed shale;

(ii) Plant communities that support associated species, including, but not limited to: *Umbellularia californica* (California bay), *Aesculus californica* (California buckeye), and *Quercus agrifolia* (coastal live oak). Other native plants associated with *D. bakeri* include—*Baccharis pulularis* ssp. *consanguinea* (coyotebrush), *Symphorcarpos* cf. *rivularis* (snowberry), *Rubus ursinus* (California blackberry), *Pteridium aqulinum* (braken fern), *Polystichum munitum* (Sword fern), *Pityrogramma triangularis* (goldback fern), *Dryopteris arguta* (coastal woodfern), *Adiantum jordanii* (maidenhair fern), and *Polypodium glycyrrhiza* (licorice fern); and

(iii) Mesic conditions on extensive north-facing slopes.

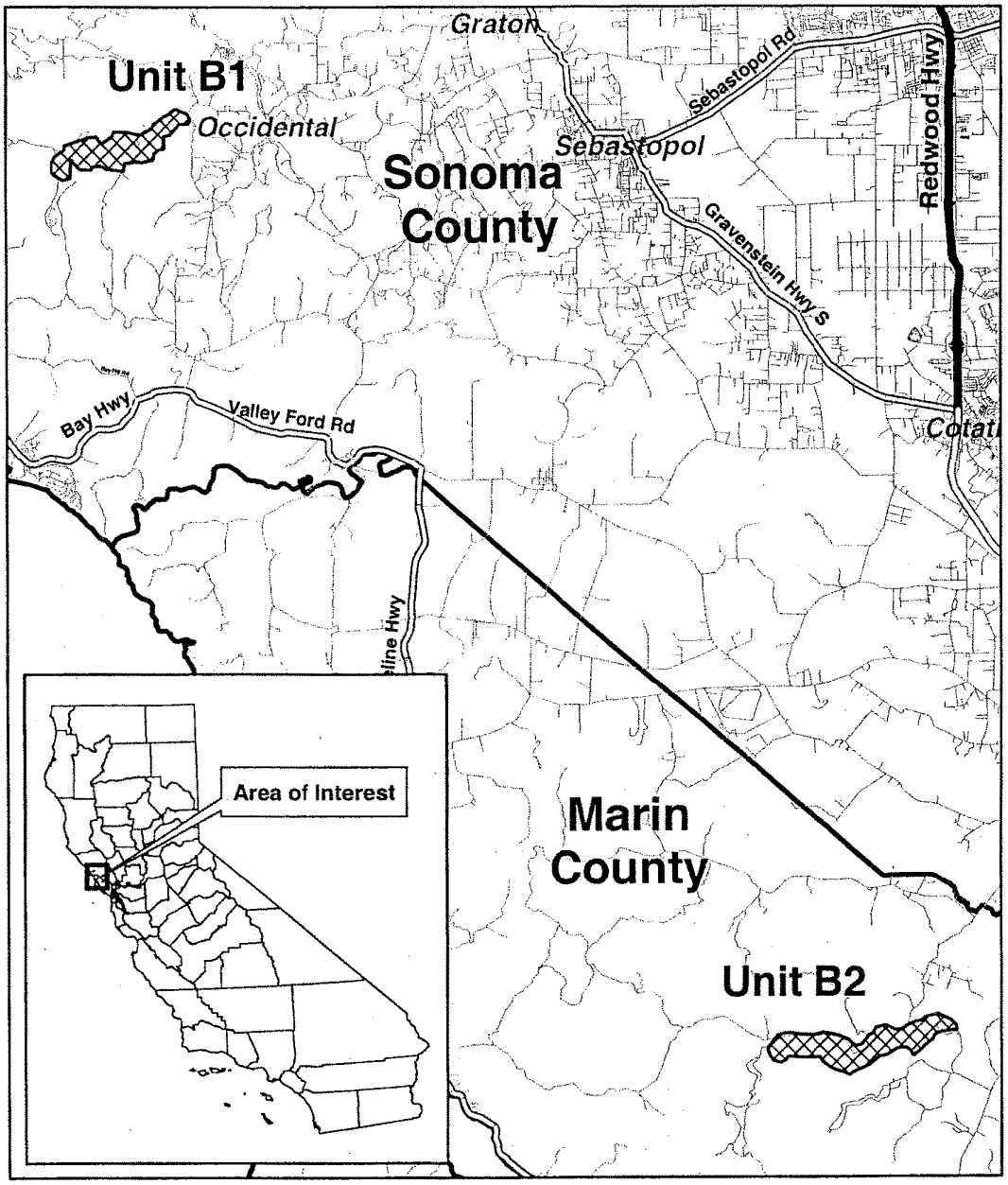
(3) Critical habitat does not include existing man-made features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical Habitat Map Units.

(i) Data layers defining map units were created on a base of USGS 7.5′ quadrangles obtained from the State of California's Stephen P. Teale Data Center. Proposed critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(ii) Map 1—Index map follows:

BILLING CODE 4310–55–P



Index Map

Delphinium bakeri

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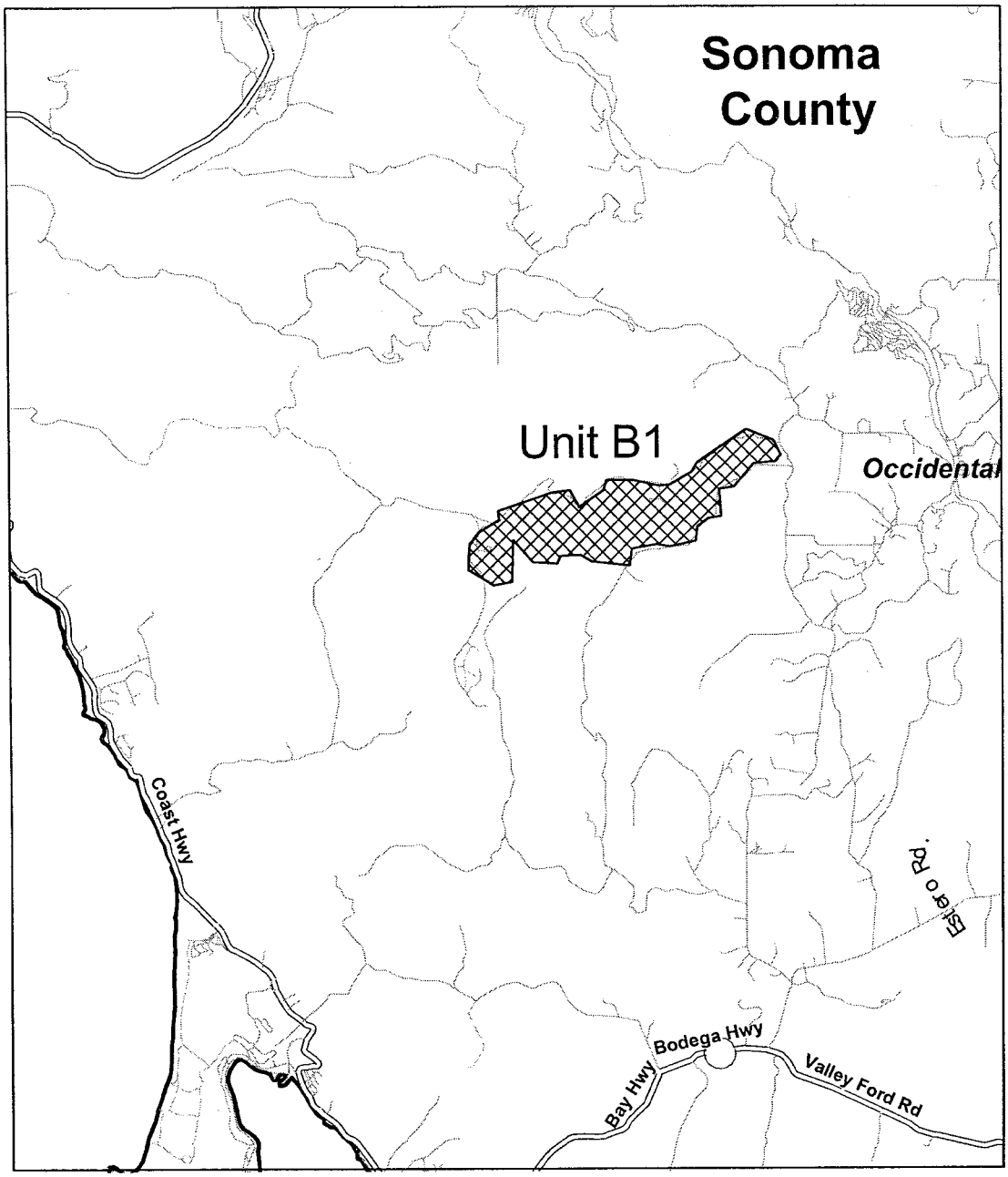
BILLING CODE 4310–55–C

(5) Unit B1: Sonoma County, California.

(i) From USGS 1:24,000 quadrangle maps Camp Meeker and Duncan Hills, California, land bounded by the following UTM10 NAD83 coordinates (E,N): 498360, 4249440; 498030, 4249650; 498040, 4249990; 498160, 4250150; 498430, 4250320; 498420, 4250440; 499140, 4250680; 499380, 4250710; 499510, 4250490; 499840, 4250710; 499880, 4250840; 500250, 4250840; 500580, 4250770; 500730, 4250780; 501020, 4250950; 501080, 4251070; 501360, 4251270; 501520, 4251370; 501730, 4251520; 502100, 4251370; 502190, 4251180; 502120, 4251090; 501830, 4251060; 501570, 4250750; 501380, 4250720; 501400, 4250360; 501230, 4250330; 501090, 4250220; 501070, 4250030; 500720, 4249960; 500550, 4249990; 500220, 4249930; 500190, 4249700; 499680, 4249760; 499520, 4249850; 499250, 4249830; 499210, 4249730; 498880, 4249750; 498620, 4250050; 498600, 4249490; 498360, 4249440

(ii) Map 2—Unit B1 follows:

BILLING CODE 4310–55–P



Unit B1: Critical Habitat Proposed for *Delphinium bakeri*

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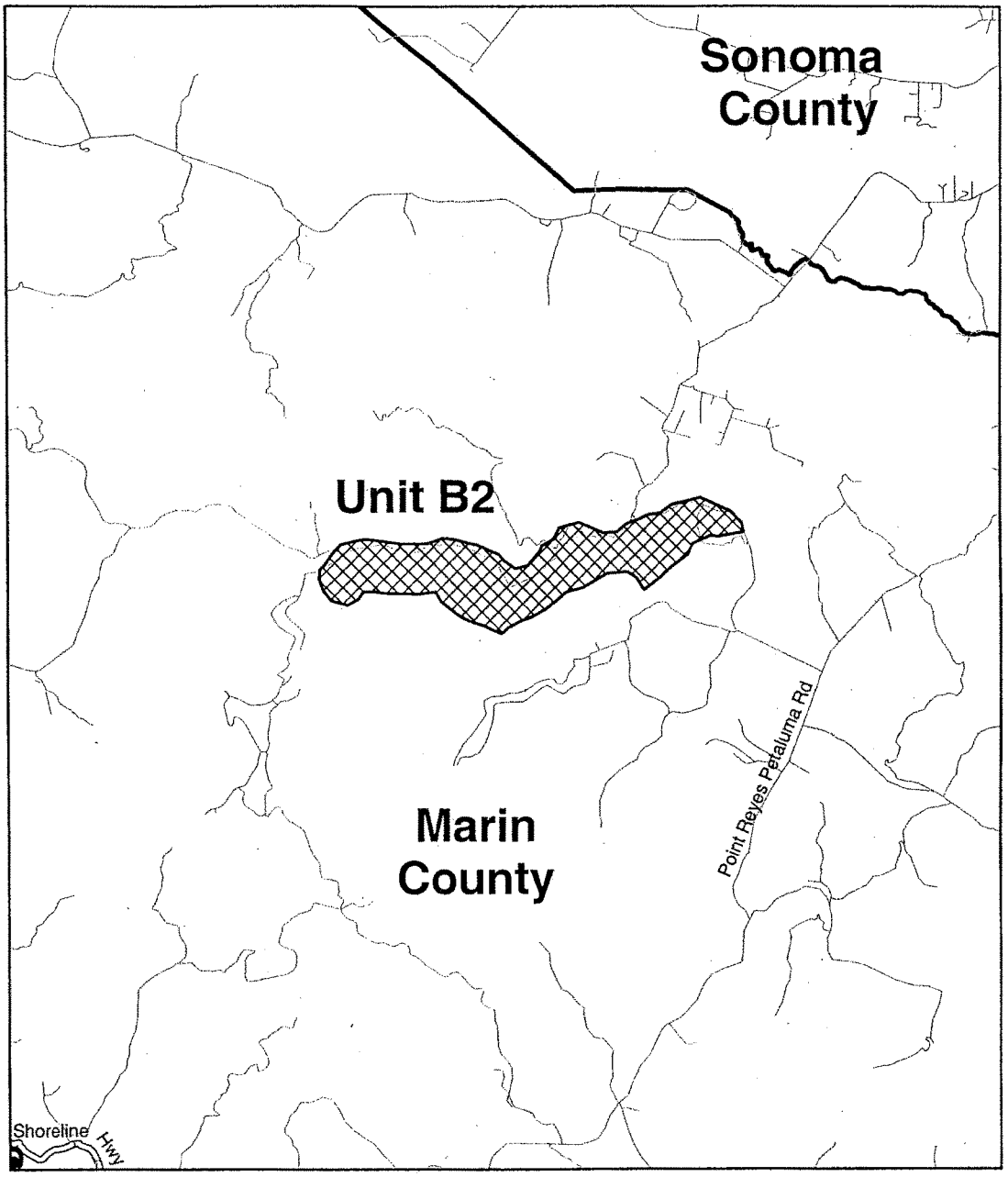
(6) Unit B2: Marin County, California.

(i) From USGS 1:24,000 quadrangle maps Petaluma and Point Reyes NE, California, land bounded by the following UTM10 NAD83 coordinates (E,N): 521780, 4222900; 521560, 4223000; 521350, 4223070; 521230, 4223130; 520980, 4223320; 520890, 4223460; 520680, 4223430; 520220, 4223440; 520100, 4223460; 519940, 4223460; 519870, 4223360; 519720, 4223280; 519510, 4223340; 519400, 4223480; 519350, 4223630; 519360, 4223760; 519410, 4223800; 519530, 4223970; 519640, 4224090; 519830, 4224140; 519980, 4224160; 520440, 4224100; 520760, 4224100; 520990, 4224170; 521130, 4224160; 521460, 4224080; 521740, 4223960; 521820, 4223870; 521960, 4223770; 522130, 4223810; 522290, 4224000; 522320, 4224070; 522480, 4224160; 522550, 4224310; 522830, 4224380; 523160, 4224240; 523340, 4224250; 523470, 4224360; 523660, 4224430; 523750, 4224480; 523920, 4224510; 524070, 4224620; 524460, 4224710; 524860, 4224530; 525010, 4224370; 525030, 4224250; 524690, 4224190; 524590, 4224200; 524360, 4224100; 524280, 4223950; 524050, 4223780; 523920, 4223650; 523700, 4223480; 523600, 4223640; 523480, 4223720; 523210, 4223700; 522880, 4223510; 522650, 4223450; 522370, 4223230; 522170, 4223120; 522050, 4223080; 521860, 4222980; 521780, 4222900

(ii) Map 3—Unit B2 follows:

BILLING CODE 4310–55–P



Unit B2: Critical Habitat Proposed for *Delphinium bakeri*

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Family Ranunculaceae: *Delphinium luteum* (Yellow larkspur)

(1) Critical habitat units are depicted for Sonoma and Marin counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Delphinium luteum* are the habitat components that provide:

(i) Plant communities that support the appropriate associated species, including north coastal scrub or coastal prairie communities;

(ii) Soils derived from sandstone or shale, with rapid runoff and high erosion potential, such as Kneeland or Yorkville series soils;

(iii) Generally north aspected areas near steep sloped canyon walls; and

(iv) Habitat upslope and downslope from known populations to maintain disturbance such as occasional rock slides or soil slumping that the species appears to require.

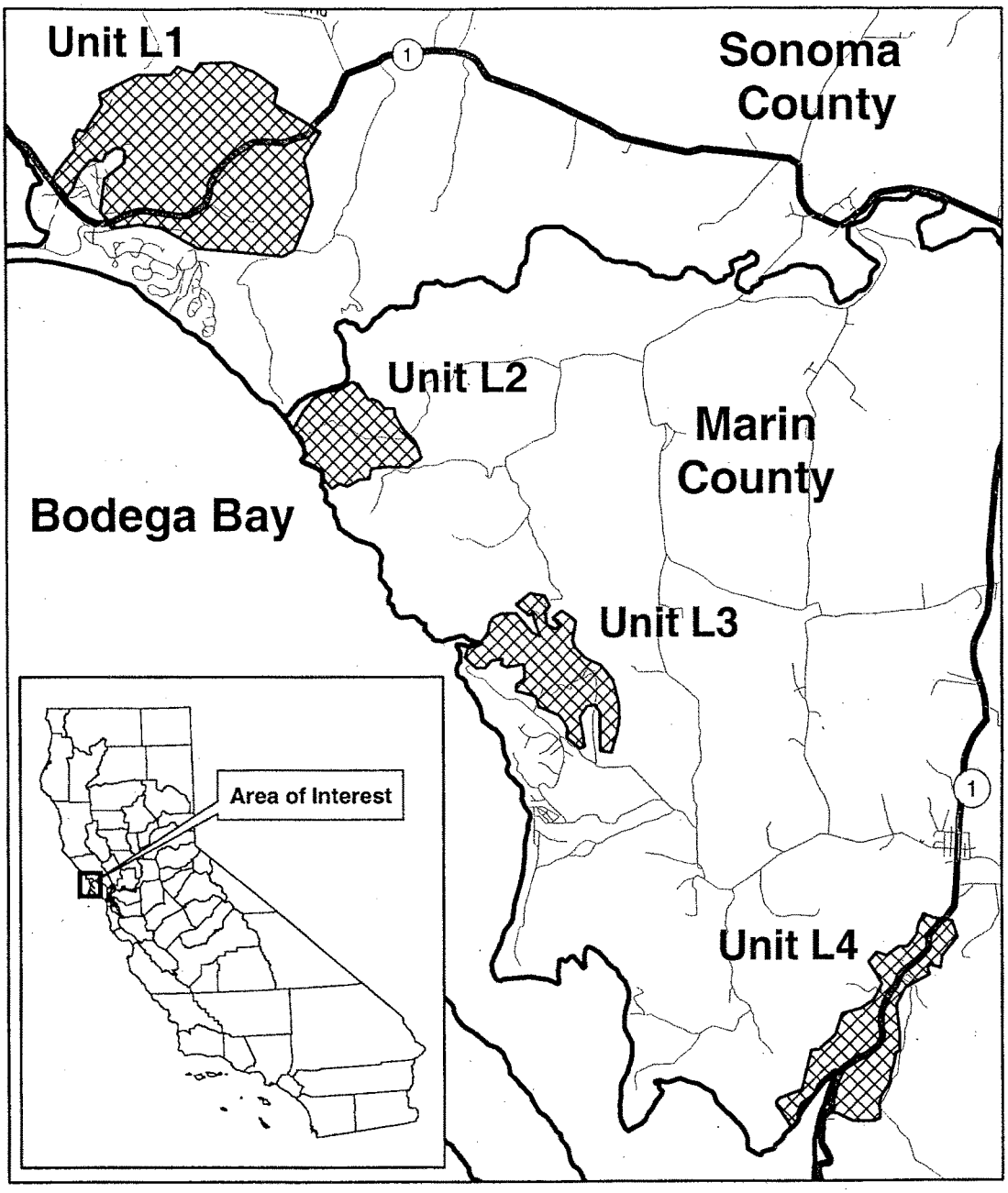
(3) Critical habitat does not include man-made existing features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical Habitat Map Units.

(i) Data layers defining map units were created on a base of USGS 7.5′ quadrangles obtained from the State of California's Stephen P. Teale Data Center. Proposed critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(i) Index map follows.

BILLING CODE 4310–55–P



Index Map

Delphinium luteum

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BILLING CODE 4310–55–C

(5) Unit L1:-Bodega Bay, Sonoma County, California.

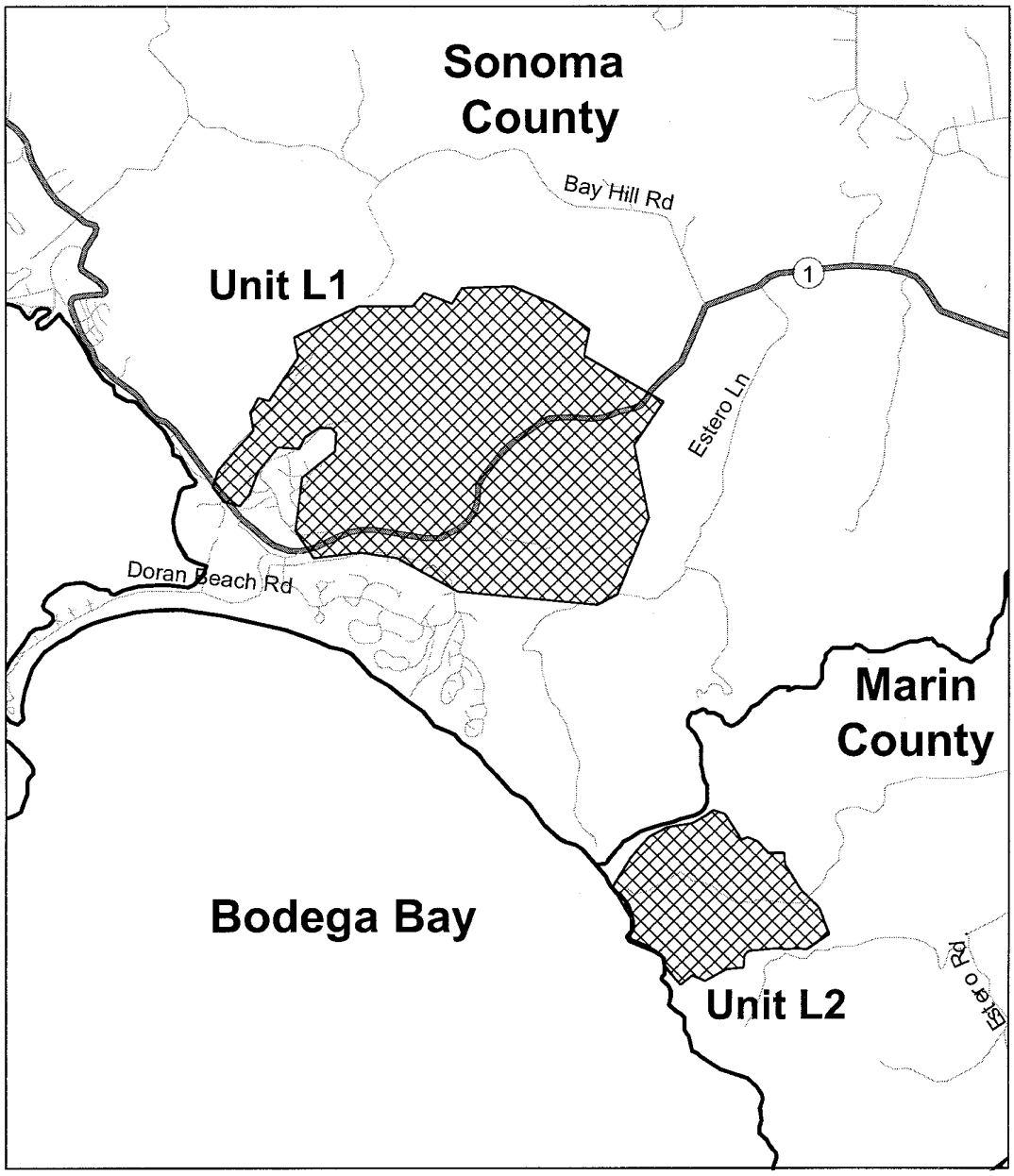
(i) From USGS 1:24,000 quadrangle map Bodega Head. Lands bounded by the following UTM10 NAD83 coordinates (E,N): 496820, 4241560; 496870, 4241690; 497130, 4241990; 497110, 4242130; 497170, 4242240; 497250, 4242220; 497470, 4242550; 497440, 4242700; 497930, 4242940; 498340, 4242940; 498430, 4243040; 498640, 4242960; 498720, 4243080; 499110, 4243090; 499410, 4242960; 499690, 4242760; 499650, 4242560; 500250, 4242210; 500030, 4241880; 500140, 4241320; 499900, 4240730; 499750, 4240650; 498690, 4240750; 498220, 4241010; 497940, 4241050; 497590, 4241010; 497450, 4241220; 497500, 4241630; 497750, 4241830; 497760, 4241970; 497720, 4242010; 497630, 4242010; 497520, 4241940; 497480, 4241850; 497320, 4241860; 497170, 4241680; 497100, 4241500; 497030, 4241410; 496910, 4241440; 496820, 4241560;

(6) Unit L2: Estero Americano, Marin County, California.

(i) From USGS 1:24,000 quadrangle map Valley Ford. Lands bounded by the following UTM10 NAD83 coordinates (E,N): 499970, 4238100; 500010, 4238150; 500010, 4238240; 499870, 4238480; 500010, 4238710; 500140, 4238860; 500280, 4238940; 500470, 4238970; 500580, 4239030; 500630, 4239070; 500720, 4239040; 500850, 4238840; 500890, 4238860; 500970, 4238830; 501050, 4238740; 501170, 4238740; 501180, 4238650; 501300, 4238460; 501440, 4238320; 501510, 4238120; 501340, 4238000; 501270, 4238010; 501190, 4238000; 501120, 4238010; 500900, 4237990; 500870, 4237960; 500860, 4237860; 500730, 4237850; 500570, 4237760; 500470, 4237800; 500380, 4237730; 500250, 4237890; 500240, 4237940; 500180, 4237980; 499990, 4238060; 499970, 4238100

(ii) Map 2—Units L1 and L2 follows:

BILLING CODE 4310–55–P



Units L1, L2: Critical Habitat Proposed for *Delphinium luteum*

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(7) Unit L3: Estero de San Antonio, Marin County, California.

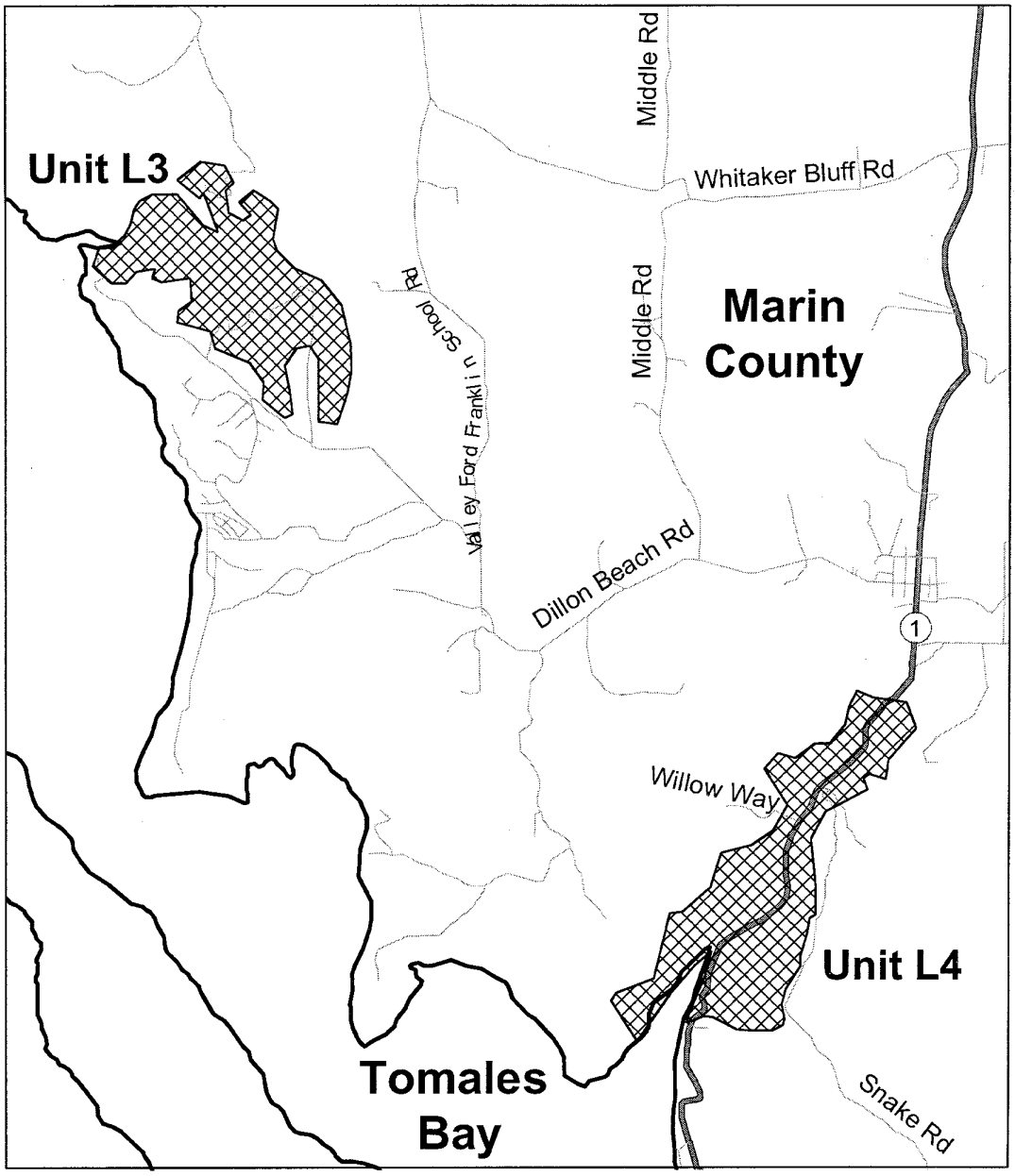
From USGS 1:24,000 quadrangle map Valley Ford. Lands bounded by the following UTM10 NAD83 coordinates (E,N): 502060, 4235600; 502110, 4235750; 502230, 4235770; 502300, 4235840; 502350, 4235930; 502370, 4236030; 502410, 4236100; 502510, 4236150; 502700, 4236150; 502900, 4235910; 503010, 4235860; 502900, 4236160; 502870, 4236120; 502700, 4236260; 502880, 4236400; 503060, 4236370; 503130, 4236240; 503070, 4236180; 503090, 4236010; 503200, 4235950; 503260, 4235990; 503170, 4236090; 503280, 4236180; 503410, 4236100; 503470, 4236040; 503430, 4235810; 503460, 4235720; 503600, 4235580; 503800, 4235490; 503950, 4235300; 504020, 4235010; 504030, 4234810; 504000, 4234630; 503920, 4234390; 503780, 4234410; 503780, 4234890; 503710, 4234990; 503610, 4234970; 503520, 4234840; 503560, 4234620; 503580, 4234470; 503520, 4234440; 503350, 4234580; 503360, 4234710; 503250, 4234860; 502990, 4234970; 502950, 4235100; 502700, 4235170; 502710, 4235260; 502810, 4235330; 502800, 4235510; 502580, 4235480; 502510, 4235510; 502530, 4235580; 502390, 4235560; 502310, 4235470; 502200, 4235470; 502060, 4235600;

(8) Unit L4: Tomales, Marin County, California

(i) From USGS 1:24,000 quadrangle map Tomales. Lands bounded by the following UTM10 NAD83 coordinates (E,N): 506200, 4229650; 506000, 4229960; 506040, 4230020; 506330, 4230130; 506450, 4230630; 506550, 4230640; 506760, 4230830; 506840, 4231090; 507070, 4231150; 507230, 4231260; 507340, 4231460; 507170, 4231740; 507270, 4231860; 507400, 4231820; 507550, 4231930; 507660, 4231930; 507780, 4232080; 507810, 4232220; 507870, 4232340; 507990, 4232290; 508250, 4232250; 508320, 4232050; 508110, 4231810; 508090, 4231660; 507960, 4231700; 507920, 4231670; 507950, 4231580; 507630, 4231410; 507520, 4231200; 507560, 4230830; 507560, 4230620; 507510, 4230590; 507490, 4230470; 507440, 4230300; 507440, 4230220; 507330, 4230050; 507300, 4229930; 507320, 4229820; 507310, 4229770; 507230, 4229730; 507060, 4229730; 506960, 4229740; 506780, 4229830; 506710, 4229840; 506580, 4229790; 506600, 4229860; 506720, 4230150; 506770, 4230340; 506640, 4230230; 506460, 4230020; 506200, 4229650;

(ii) Map 7—Units L3 and L4 follows:

BILLING CODE 4310–55–P



Units L3, L4: Critical Habitat Proposed for *Delphinium luteum*

N
W E
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0 0.75 1.5

BILLING CODE 4310–55–C

* * * * *

Dated: June 11, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–15340 Filed 6–17–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 117
Tuesday, June 18, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on July 24, 2002, in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on July 24, 2002 from 6 to 8:30 pm.

ADDRESSES: The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Suite B, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: This will be the ninth meeting of the committee and will focus on selecting Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: June 7, 2002

S.E. Woltering,

Forest Supervisor.

[FR Doc. 02–15241 Filed 6–17–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on June 27, 2002, from 3 P.M. to 6 P.M.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361; EMAIL *dmcintosh@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review and approval of the minutes of the March meeting; (2) apply Criteria to Submitted Proposals; (3) Select Projects that best meet the Evaluation Criteria; (4) Recommend Projects; and (5) Public Comment period. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: June 10, 2002.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 02–15277 Filed 6–17–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1231]

Expansion of Foreign-Trade Zone 8, Toldeo, Ohio, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Toledo-Lucas County Port Authority, grantee of Foreign-Trade Zone 8, submitted an application to the Board for authority to expand FTZ status to a site (462 acres) at the Cedar Point Development Park located in Oregon, Ohio (Site 4), within the Toledo/Sandusky Customs port of entry (FTZ Docket 54–2000; filed 9/19/00; amended 3/4/02);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 58044, 9/27/00) and the application, as amended, has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal, as amended, is in the public interest;

Now, therefore, the Board hereby orders:

The application, as amended, to expand FTZ 8 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 7th day of June 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–15343 Filed 6–17–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1233]

Expansion of Foreign-Trade Zone 204 Tri-Cities, Tennessee/Virginia Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Tri-Cities Airport Commission, grantee of Foreign-Trade Zone 204, submitted an application to the Board for authority to expand FTZ 204 to include a new site at the Holston Business and Technology Park (Site 8) in Kingsport (Hawkins County), Tennessee, and a new site at the Washington County Industrial Park (Site 9) in Johnson City (Washington County), Tennessee (FTZ Docket 42–2001; filed 10/26/01 and amended 12/22/01);

Whereas, notice inviting public comment was given in the **Federal**

Register (66 FR 55637, 11/2/01) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application, as amended, to expand FTZ 204 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 7th day of June 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–15344 Filed 6–17–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 27–2002]

Foreign-Trade Zone 12—McAllen, Texas, Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the McAllen Economic Development Corporation, grantee of Foreign-Trade Zone 12, McAllen, Texas, requesting authority to expand its zone to include an additional site in the McAllen, Texas, area, within the Hidalgo/Pharr Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 11, 2002.

FTZ 12 was approved on October 23, 1970 (Board Order 84, 35 FR 16962, 11/3/70) and expanded on May 2, 1984 (Board Order 254, 49 FR 22842, 6/1/84), on June 19, 1990 (Board Order 469, 55 FR 26225, 6/27/90), and on April 29, 1996 (Board Order 819, 61 FR 21157, 5/9/96). The zone currently consists of: *Site 1* (775 acres, 2 parcels)—McAllen Southwest Industrial Area, Hidalgo County: *Parcel 1* (80 acres) located at FM 1016 and Ware Road and *Parcel 2* (695 acres) located on FM 1016 between Bentsen Road and Shary Road; and, *Site 2* (8.5 acres)—at the Air Cargo Facility within McAllen Miller International Airport complex, McAllen.

The applicant is now requesting authority to expand the general-purpose zone to include two additional parcels at Site 1 within the McAllen Southwest Industrial Area: *Parcel 3* (50 acres) at the warehouse facility of Am-Mex Products, Inc., 3801 West Military Highway, Hidalgo County; and *Parcel 4* (40 acres) at the warehouse facility of Millard Refrigerated Services, 6800 South Ware Road, Hidalgo County. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses below:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street NW, Washington, DC 20005; or

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue NW, Washington, DC 20230.

The closing period for their receipt is August 19, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 3, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the offices of the McAllen Economic Development Corporation, 6401 South 33rd Street, McAllen, TX 78503.

Dated: June 11, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–15342 Filed 6–17–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Initiation of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: In response to a letter from Husteel Co., Ltd. notifying the Department of Commerce that its corporate name has changed from Shinho Steel Co., Ltd., the Department of Commerce is initiating a changed circumstances administrative review of the antidumping duty order on certain circular welded non-alloy steel pipe from the Republic of Korea (*see Notice of Antidumping Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (''Korea''), Mexico, and Venezuela and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Welded Non-Alloy Steel Pipe from Korea* (57 FR 49453, November 2, 1992)).

EFFECTIVE DATE: June 18, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam or Scott Holland, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0176 and (202) 482–1279, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the ''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department'') regulations are to 19 CFR Part 351 (April 2002).

Scope of the Review

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black,

galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela* (61 FR 11608, March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following *Harmonized Tariff Schedule of the United States* (''HTSUS'') subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Initiation of Changed Circumstances Review

On May 2, 2002, Husteel Co., Ltd. (''Husteel''), notified the Department that, as of April 1, 2002, its corporate name changed from Shinho Steel Co., Ltd. (''Shinho'' is a company subject to the antidumping duty order on certain circular welded non-alloy steel pipe from Korea), and requested that the Department initiate a changed circumstances review to confirm that Husteel is the successor-in-interest to Shinho. Husteel also requested that the Department issue the preliminary results of the changed circumstances review in conjunction with the notice of initiation, in accordance with 19 CFR 351.221(c)(3)(ii).

Husteel provided documentation to support the name change, consisting of the minutes of the shareholders' meeting where the name change was approved, comparison chart of the articles of incorporation, court certification of the name change, and a new business registration certificate issued by tax authorities. Husteel has stated that the company's owners, management structure, production facilities, supplier relationships and customer base remain unchanged, but has not provided documentation supporting these statements.

Pursuant to section 751 (b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information, or a request from an interested party, concerning an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by Husteel shows changed circumstances sufficient to warrant a review. *See* 19 CFR 351.216(c).

Concerning Husteel's request that the Department issue the preliminary results of the changed circumstances review in conjunction with the notice of initiation, Husteel has not provided sufficient evidence to support a preliminary finding. In making successor-in-interest determinations, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20461 (May 13, 1992). While no single factor, or combination of factors, will necessarily be dispositive, the Department will generally consider the new company to be the successor to its predecessor company if the resulting operations are essentially the same as the predecessor company. *See e.g., id.* and *Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as its predecessor, the Department will treat the new company as the successor-in-interest to the predecessor. In this instance, while Husteel has stated for the record that the company's owners, management structure, production facilities, supplier relationships and customer base remain unchanged, it has not provided evidence supporting these statements.

Therefore, in accordance with section 751(b)(1) of the Act and sections 19 CFR 351.216(b) and 351.221(b)(1), we are initiating a changed circumstances administrative review to determine whether entries naming Husteel as manufacturer or exporter should receive the cash deposit rate currently applied to Shinho.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances antidumping duty administrative review, in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the Department's preliminary factual and legal conclusions. The Department will issue its final results of review in accordance with the time limits set forth in 19 CFR 351.216(e).

This notice is published in accordance with section 751(b)(1) of the Act.

Dated: June 12, 2002

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration, Group 1.

[FR Doc. 02–15345 Filed 6–17–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Petroleum Wax Candles from the People's Republic of China: Notice of Final Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On January 24, 2002, the Department of Commerce (the Department) published the preliminary results of its new shipper review of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). *See Preliminary Results of Antidumping Duty New Shipper Review: Petroleum Wax Candles from the People's Republic of China*, 67 FR 3478 (January 24, 2002) (*Preliminary Results*). The new shipper review covers the period August 1, 2000 through January 31, 2001.

Based on our analysis of comments received, we have made changes to the margin calculations. Therefore, the final

results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: June 18, 2002.

FOR FURTHER INFORMATION CONTACT: Sally Gannon or Javier Barrientos Antidumping/Countervailing Duty Enforcement Office VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0162 and (202) 482–2243, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001). The Department has conducted this new shipper review in accordance with section 751 of the Act.

Background

The company covered by this new shipper review is Shanghai New Star Im/Ex Co., Ltd. (New Star). Since the publication of the *Preliminary Results*, the following events have occurred. On February 13, 2002, we received a timely submission of publicly available information on the surrogate values for petroleum wax candles from the National Candles Association, petitioner in this proceeding. On February 24, 2002, we received case briefs from New Star and petitioner. On March 4, 2002, we received rebuttal briefs from New Star and petitioner. New Star's briefs were filed not only on its own behalf, but also on behalf of its U.S. importer. On April 12, 2002, the Department issued its notice of extension of the time limit for the final results of the antidumping new shipper review to May 30, 2002. *See Petroleum Wax Candles from the People's Republic of China: Notice of Extension of Time Limit for Final Results of the Antidumping New Shipper Review*, (67 FR 19160, April 18, 2002). On May 7, 2002, the Department held a public hearing. The Department has now completed this review in accordance with section 751 (a)(2)(B) of the Act.

Scope of Antidumping Duty Order

The products covered by this order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers. The products were classified under the Tariff Schedules of the United States (TSUS) item 755.25, Candles and Tapers. The products are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item 3406.00.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Analysis of Comments Received

All issues raised in the briefs filed by parties to this new shipper review are addressed in the *Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement Group III, to Faryar Shirzad, Assistant Secretary for Import Administration: Issues and Decision Memorandum for the Final Results of the Antidumping New Shipper Review of Petroleum Wax Candles from the People's Republic of China*, dated May 30, 2001 (*Decision Memo*), which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memo*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the *Decision Memo* can be accessed directly on the internet at http://ia.ita.doc.gov. The paper copy and electronic version of the *Decision Memo* are identical in content.

Separate Rates

In the *Preliminary Results*, we found that New Star met the requirements for receiving a separate rate. No new information or evidence of changed circumstances has been presented since then to warrant reconsideration of this finding. Accordingly, New Star has been assigned a separate rate, the rate listed below under ''Final Results of Review,'' for purposes of these final results.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These include changes to the : time period chosen for factor values; inflation adjustment for electricity; percent factors for factory overhead, SG&A, and profit; and, foreign port brokerage, handling, and loading costs. For a discussion of the issues and changes made, refer to the *Decision Memo*.

Final Results of Review

We determine that the following weighted-average margin exists for the period August 1, 2000 through January 31, 2001:

Manufacturer/Exporter	Percent
Shanghai New Star Import/Export Co., Ltd.	95.22%

Assessment Rates

The Department shall determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific assessment rates. We will direct Customs to assess the rate against the entered customs value for each entry of subject merchandise from New Star during the POR.

Cash Deposit Requirements

The deposit requirement at the rate noted above, under ''Final Results of Review,'' will be effective for all shipments exported by New Star of petroleum wax candles from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, as provided by section 751(a)(2)(C) of the Act.

For all other companies, the following rates are in effect and remain unaffected by the results of this new shipper review: (1) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (2) for all other PRC exporters, the rate will be the current PRC-wide *ad valorem* rate, which is 54.21 percent; and (3) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

Notifications to Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative

protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

DATED: May 30, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Issues

1. Affiliation of Exporter and U.S. Importer
2. Time Periods for Factor Values
3. Factor Value For Coal
4. Inflation Adjustment For Electricity
5. Factor Identification For Additive
6. Percent Factors For Factory Overhead, SG&A, and Profit
7. Number of Labor Hours Incurred in Candle Production
8. Ocean Freight
9. Foreign Port Brokerage, Handling, and Loading Expenses And Marine Insurance

[FR Doc. 02–15341 Filed 6–17–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–869]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final determination of sales at less than fair value.

SUMMARY: On May 20, 2002, we published in the **Federal Register** our notice of final determination of sales at less than fair value. See *Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from the People's Republic of China,* 67 FR 35479 (May 20, 2002). We are amending our final determination to correct clerical and ministerial errors discovered with respect to the antidumping duty margin calculations for Maanshan Iron & Steel Co., Ltd.

EFFECTIVE DATE: June 18, 2002.

FOR FURTHER INFORMATION CONTACT: Lyn Johnson or Richard Rimlinger, AD/CVD Enforcement Group I, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

Period of Investigation

The period of investigation is October 1, 2000, through March 31, 2001.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the regulations of the Department of Commerce (the Department) are to 19 CFR part 351 (April 2001).

SUPPLEMENTARY INFORMATION:

Background

On May 20, 2002, we published in the **Federal Register** our final determination that structural steel beams from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735(a) of the Act. See *Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from the People's Republic of China,* 67 FR 35479 (May 20, 2002), and accompanying *Issues and Decision Memorandum (Final Determination).* Following publication, the Department discovered two ministerial errors it made in the language it used in the notice published in the **Federal Register**. On May 28, 2002, the Committee for Fair Beam Imports and its individual members (the petitioners) filed timely comments on the *Final Determination.* Some of the petitioners' comments were allegations of ministerial errors and others were issues being raised for the first time. On June 3, 2002, the respondent, Maanshan Iron & Steel Co, Ltd. (Maanshan), filed timely rebuttal comments.

Scope of Investigation

The scope of this investigation covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) Structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors, or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector, or attachment.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Analysis of Comments Received

The Department's regulations define a ministerial error as one involving ''addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' See 19 CFR 351.224(f). After reviewing the allegations, we have determined, in accordance with 19 CFR 351.224, that the *Final Determination* includes ministerial errors. Therefore, we have made changes, described in the section below, to the final determination.

Changes Since to Final Determination

We have made the following changes to the notice published in the **Federal Register** and our margin calculations. Please see the *Decision Memorandum* accompanying this notice for a detailed discussion of these changes.

(1) At 67 FR 35480 of the *Final Determination,* in the ''Changes Since the Preliminary Determination'' section, the Department stated mistakenly at (6)(c) that '' * * * [it] used a brokerage and handling cost based on bulk products instead of stainless steel products.'' This statement is incorrect and, therefore, the stated cost does not apply to this investigation.

(2) At 67 FR 35481 of the *Final Determination,* in the ''Final Determination Margins'' section and the ''Continuation of Suspension of Liquidation'' section, we neglected to identify Ma Steel International (Ma Steel) as the exporter. Also, the language under ''Continuation of Suspension of Liquidation'' stated incorrectly that the Customs instructions would apply to entries '' * * * for consumption on or after the publication date of this final determination in the **Federal Register**.'' The correct language is '' * * * for consumption on or after December 28, 2001, the publication date of the preliminary determination in the **Federal Register**.''

(3) We corrected the brokerage and handling amount. We also added a freight amount to the cost of steam coal.

(4) We excluded freight costs from the surrogate values we applied to waste and by-products.

(5) We corrected our calculations of the factory overhead and selling, general, and administrative (SG&A) expense financial ratios as follows: a) We recalculated the overhead and SG&A expenses using the correct amount for ''Stores and Spares consumed'' based on TATA's 2001 financial statements; b) we moved the amount of ''Stores and Spares consumed'' from raw materials to overhead expenses; c) we excluded ''Freight & Handling'' expenses and ''Purchases of Finished, Semi-Finished Steel and Other Products'' from our calculations of the financial ratios.

Amended Final Determination Margin

In accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of structural steel beams from the PRC with respect to Maanshan and its affiliated sales entity in the PRC, Ma Steel. The PRC-wide rate has not changed. As a result of correcting ministerial errors, we determine that the following percentage weighted-average amended final margins exist for the period October 1, 2000, through March 31, 2001:

Manufacturer/exporter	Final determination	Amended final determination
Maanshan/Ma Steel ..	0.00	15.23
PRC-Wide Rate	89.17	89.17

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to begin suspension of liquidation of all entries of structural steel beams from the PRC that are produced by Maanshan, exported by Maanshan or Ma Steel, and entered, or withdrawn from warehouse, for consumption on or after the date of publication of this amended final determination in the **Federal Register**. We are also directing the Customs Service to continue to suspend liquidation of all entries of structural steel beams from the PRC that are entered, or withdrawn from warehouse, for consumption on or after December 28, 2001, the publication date of the preliminary determination in the **Federal Register** for all other exporters. The Customs Service shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown above. The suspension-of-liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of our determination. As our amended final determination is affirmative, the ITC will determine, within 45 days from the date of the publication of the *Final Determination* (May 20, 2002), whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 735(d) and 777(i) of the Act.

Dated: June 12, 2002.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–15346 Filed 6–17–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement, Article 1904; Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: North American Free Trade Agreement (NAFTA) Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Consent Motion to Terminate the Panel Review of the final antidumping duty administrative review made by the International Trade Administration, respecting Greenhouse Tomatoes from Canada (Secretariat File No. USA–CDA–2002–1904–04).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review by the complainants, the panel review is terminated as of May 29, 2002. A panel has not been appointed to this panel review. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review,* this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: May 30, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–15323 Filed 6–17–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 020503109–2109–01]

RIN 0693–AB51

Establishment of Information Technology Security Validation Programs Fees

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) operates a number of Information Technology Security Validation Programs. Under these programs, vendors use independent private sector, accredited testing laboratories to have their products tested. The goal of the Information Technology Security Validation Programs is to promote the use of validated products and provide Federal agencies and other users with a security metric to use in procuring software and equipment. The results of the independent testing performed by accredited laboratories provide this metric. NIST validates the test results and issues validation certificates. NIST also posts and maintains the validated products lists on the Computer Security Division Web site. The Information Technology Security Validation Programs currently do not charge a fee for their services, but demand for these services as increased over 1800% since 1996 in some cases. This growth has resulted in significantly increased expense to NIST for program management and associated functions. NIST issues this notice to adopt a fee schedule for some of the Information Technology Security Validation Programs, with fees being set individually for each program. The fees will allow NIST to continue and expand the Information Technology Security Validation Programs.

DATES: This notice is effective July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Ray Snouffer, Computer Security Division, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone (301) 975–4436, e-mail: *ray.snouffer@nist.gov.*

SUPPLEMENTARY INFORMATION: Federal agencies, industry, and the public now rely on a number of measures for the protection of information and communications used in electronic commerce, critical infrastructure and other application areas. Though these measures are used to provide security, weaknesses such as poor design can render the product insecure and place highly sensitive information at risk. Adequate testing and validation against established standards is essential to provide security assurance. NIST operates a number of established Information Technology Security Validation Programs. Under these programs, vendors use independent private sector, accredited testing laboratories to have their products tested. The goal of the Information Technology Security Validation Programs is to promote the use of validated products and provide Federal agencies and other users with a security metric to use in procuring software and equipment. The results of the independent testing performed by accredited laboratories provide this metric. Federal agencies, industry, and the public can choose products from the Validated Products List and have increased confidence that the products meet their claimed levels of performance and security.

NIST validates the test results and issues validation certificates. NIST also posts and maintains the validated products lists on the Computer Security Division web site. Since the IT standards, security specifications, and NIST security recommendations, which underlie the testing programs must be flexible enough to adapt to advancements and innovations in science and technology, NIST continually performs reviews and updates. This process is based on technological and economical changes, which require research and interpretation of the standards.

The Information Technology Security Validation Programs currently do not charge a fee for their services, but demand for these services as increased over 1800% since 1996 in some cases. This growth has resulted in significantly increased expense to NIST for program management and associated functions. NIST proposes to adopt a fee schedule for some of the Information Technology Security Validation Programs with fees being set individually for each program. The fees will allow NIST to continue and expand the Information Technology Security Validation Programs. Fees will be subjected to an annual cost-analysis to determine if the fees need adjustment.

The first Information Technology Security Validation Program to charge a fee will be the Cryptographic Module Validation Program (CMVP). Each of the Rating Levels (1–4) will have a different fee. Every Validation report will be charged a ''baseline'' fee. Baseline fees will accompany each validation report submitted to NIST. Validation reports will not be reviewed until such time as NIST receives payment of the baseline fee from the vendor. Validation reports that necessitate extended evaluation and collaboration with the certifying laboratory will be charged an additional ''extended'' fee. The baseline and extended fees for each Rating Level will be:

Level	Baseline fee	Extended fee	Total possible fee
1	$2750	$1250	$4000
2	3750	1750	5500
3	5250	2500	7750
4	7250	3500	10750

All fees are given in US dollars.

The levels specified above are commensurate with the security testing levels applied by the Cryptographic Module Testing laboratories in determining compliance with FIPS 140–2. A government and industry working group composed of both users and vendors developed FIPS 140–2. The working group identified eleven areas of security requirements with four increasing levels of security for cryptographic modules. The security levels allow for a wide spectrum of data sensitivity (*e.g.,* low value administrative data, million dollar funds transfers, and health data), and a diversity of application environments (*e.g.,* a guarded facility, an office, and a completely unprotected location). Each security level offers an increase in security over the preceding level.

Authority: NIST's activities to protect Federal sensitive (unclassified) systems are undertaken pursuant to specific responsibilities assigned to NIST in section 5131 of the Information Technology

Management Reform Act of 1996 (Pub. L. 104–106), the Computer Security Act of 1987 (Pub. L. 100–235), and Appendix III to Office of Management and Budget Circular A–130. NIST's authority to perform work for others and charge fees for those services is found at 15 U.S.C. 273 and 275a.

Classification: Because notice and comment are not required under 5 U.S.C. 553 or any other law, for matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts, a regulatory flexibility analysis (5 U.S.C. 601 *et seq.*) is not required and has not been prepared.

Executive Order 12866: This notice has been determined to be not significant for the purposes of Executive Order 12866.

Dated: June 12, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–15278 Filed 6–17–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Olympic Coast National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Olympic Coast National Marine Sanctuary (OCNMS or Sanctuary) is seeking applicants for the following vacant seat on its Sanctuary Advisory Council (Council): alternate for Tourism/Recreation. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. The selected alternate will serve a term that expires at the end of the current member's term.

DATES: Applications are due by July 12, 2002.

ADDRESSES: Application kits may be obtained from Andrew Palmer, OCNMS, 138 West First St., Port Angeles, WA 98362 Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Andrew Palmer at (360) 457–6622 x30 or *andrew.palmer@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Sanctuary Advisory Council provides NOAA with advice on the management of the Sanctuary. Members provide advice to the Olympic Coast Sanctuary Superintendent on Sanctuary issues. The Council, through its members, also serves as liaison to the community regarding Sanctuary issues and acts as a conduit, relaying the community's interests, concerns, and management needs to the Sanctuary.

The Sanctuary Advisory Council members represent public interest groups, local industry, commercial and recreational user groups, academia, conservation groups, government agencies, and the general public.

Authority: 16 U.S.C. Section 1431 et seq.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: June 10, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–15288 Filed 6–17–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Representative and Address Provisions

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 19, 2002.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231; by telephone at (703) 308–7400; or by electronic mail at *susan.brown@uspto.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Robert J. Spar, Director, Office of Patent Legal Administration, USPTO, Washington, DC 20231; by telephone at (703) 308–5107; or by electronic mail at *bob.spar@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Under 35 U.S.C. 2 and 37 CFR 1.31–1.36 and 1.363, a patent applicant or assignee of record may grant power of attorney or authorization of agent to a person who is registered to practice before the United States Patent and Trademark Office (USPTO) to act for them in a representative capacity on a patent or application. A power of attorney or authorization of agent may also be revoked, and a registered representative may also withdraw as attorney or agent of record under 37 CFR 1.36. The rules of practice (37 CFR 1.33) also provide for the applicant, patentee, assignee, or representative of record to supply a correspondence address and daytime telephone number for receiving notices, official letters, and other communications from the USPTO. Further, the rules of practice (37 CFR 1.33(d) and 1.363) permit the applicant, patentee, assignee, or representative of record to specify a separate ''fee address'' for correspondence related to maintenance fees, which is covered under OMB Control Number 0651–0016 ''Rules for Patent Maintenance Fees.'' Maintaining a correct and updated correspondence address is necessary so that correspondence from the USPTO related to a patent or application will be properly received by the applicant, patentee, assignee, or authorized representative.

The USPTO's Customer Number practice permits applicants, patentees, assignees, and registered representatives to efficiently change the correspondence address or registered representatives for a number of patents or applications with one change request instead of filing separate change requests for each patent or application. Customers may request a customer number from the USPTO and associate this customer number with a correspondence address or a list of registered practitioners. Customers may then use this customer number to designate or change the correspondence address or to grant power of attorney to the list of registered practitioners for any number of patents or applications. Any changes to the address or practitioner information associated with a customer number will be applied to all patents and applications associated with that customer number.

The Customer Number practice is optional, in that changes of

correspondence address or appointments of registered representatives may be filed separately for each patent or application. However, a customer number associated with the correspondence address for a patent application is required in order to access information about the application using the Patent Application Information Retrieval (PAIR) system, which is available through the USPTO web site. The PAIR system allows authorized individuals secure access to application status information over the Internet, but only for patent applications that are linked to a customer number. Increased access to the PAIR system over the Internet has resulted in an increase in requests for a customer number. This increase in submissions of customer number requests due to a program change was submitted to the Office of Management and Budget (OMB) as part of a change worksheet and approved by OMB on November 29, 2001.

This information collection includes the information necessary to submit a request to grant or revoke power of attorney or authorization of agent for a patent application and for a registered representative to withdraw as attorney or agent of record for a patent application. This collection also includes the information necessary to request a customer number and associate a correspondence address or list of practitioners with this customer number, to change the correspondence address or practitioners associated with a customer number, and to designate or change the correspondence address or registered representatives for one or more patents or applications.

In addition to the forms offered by the USPTO to assist customers with providing the information covered by this collection, customers may also use a spreadsheet format (Customer Number Upload Spreadsheet) to designate or change the correspondence address, fee address, or power of attorney information for a list of patents or applications. The Customer Number Upload Spreadsheet must be submitted to the USPTO on a computer-readable diskette as specified in the notice entitled ''Extension of the Payor Number Practice (Through 'Customer Numbers') to Matters Involving Pending Patent Applications,'' published in the **Federal Register** at 61 FR 54622, 54623–54624 (October 21, 1996). The diskette must be accompanied by a paper copy of the spreadsheet and a signed cover letter requesting entry of the address and representative changes for the listed patents and applications. The spreadsheet and printed materials must be mailed to the USPTO and cannot be filed electronically over the Internet. Customers may download a Microsoft Excel template with instructions from the USPTO web site to assist them in preparing the spreadsheet in the proper format. The USPTO expects that the number of Customer Number Upload Spreadsheet submissions will increase as the use of customer numbers and electronic filing of patent applications increases.

This collection previously included a means to authorize an attorney or agent to take instructions from an intermediate representative without directly contacting the applicant or assignee (Instruction Authorization Form PTO/SB/84), but this form is being deleted because the corresponding USPTO policy is no longer in force.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO.

III. Data

OMB Number: 0651–0035.

Form Number(s): PTO/SB/81/82/83/121/122/123/124A/124B/125A/125B.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions; and the Federal Government.

Estimated Number of Respondents: 338,280 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 3 to 12 minutes (0.05 to 0.2 hours) to complete this information, depending on the form. This includes time to gather the necessary information, prepare the form, and submit the completed request. The USPTO estimates that it will take the public approximately 1 hour and 45 minutes (1.75 hours) to submit a Customer Number Upload Spreadsheet, including the time for preparing the spreadsheet file on diskette, printing the copy of the spreadsheet, and producing the signed cover letter.

Estimated Total Annual Respondent Burden Hours: 31,259 hours per year.

Estimated Total Annual Respondent Cost Burden: $957,750 per year. The USPTO expects that Requests for Withdrawal as Attorney or Agent will be prepared by an attorney and that the other items in this collection will be prepared by paraprofessionals. Using the professional hourly rate of $252 per hour for associate attorneys in private firms, the USPTO estimates that the respondent cost burden for submitting Requests for Withdrawal as Attorney or Agent (PTO/SB/83) will be $22,680 per year. Using the paraprofessional hourly rate of $30 per hour, the USPTO estimates that the respondent cost burden for submitting the other forms in this collection and the Customer Number Upload Spreadsheets will be $935,070 per year. The total respondent cost burden is $957,750 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Power of Attorney or Authorization of Agent	3 minutes	312,700	15,635
Revocation of Power of Attorney or Authorization of Agent	3 minutes	615	31
Request for Withdrawal as Attorney or Agent	12 minutes	450	90
Correspondence Address Indication Form	12 minutes	55	11
Change of Correspondence Address	3 minutes	12,000	600
Request for Customer Number Data Change	12 minutes	560	112
Request for Customer Number	12 minutes	3,900	780
Customer Number Upload Spreadsheet	1 hour and 45 minutes	8,000	14,000
Total		338,280	31,259

Estimated Total Annual Non-hour Respondent Cost Burden: $356. There are no maintenance costs or filing fees associated with this information collection. However, this collection does have annual (non-hour) cost burden in the form of capital start-up costs associated with using the Customer Number Upload Spreadsheet

to change the correspondence address or power of attorney for a list of patents or applications. The spreadsheet must be submitted to the USPTO on a computer-readable diskette. The retail price of the latest version of the Microsoft Excel software for creating the spreadsheet file is $339, although this software is commonly purchased as part of a bundle with other Microsoft Office applications such as Word, Outlook, and PowerPoint. A box of ten 3.5-inch diskettes can be purchased for approximately $5, or 50 cents per diskette. Padded mailing envelopes for safely shipping the diskettes can be purchased for approximately $12 for a package of 12, or $1 per envelope. The total non-hour respondent cost burden in the form of capital start-up costs is $356 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 12, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 02–15233 Filed 6–17–02; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of funding opportunity for Grants To Support the Martin Luther King, Jr. Service Day Initiative

AGENCY: Corporation for National and Community Service.

ACTION: Notice of funding opportunity.

SUMMARY: Subject to the availability of appropriations, the Corporation for National and Community Service (hereinafter the ''Corporation'') intends to award between $400,000 and $600,000 in grant funds to pay for the federal share of the cost of planning and carrying out service opportunities in conjunction with the federal legal holiday honoring the birthday of Martin Luther King, Jr. on January 20, 2003. The Corporation invites applications for these grants.

The purpose of the grants is to mobilize more Americans to observe the Martin Luther King, Jr. federal holiday as a day of service in communities and to bring people together around the common focus of service to others. To achieve this, depending upon appropriations provided by the Congress for the Corporation, and based upon previous allocations of funding for this activity, we will disburse between $400,000 and $600,000 in grant funds to support approved service opportunities. Eligible organizations may apply for a grant to support national service and community volunteering projects. Grant awards may range from $2,500 to $7,500. Proposals must be cost effective, based on the number of people serving and being served.

DATES: Applications must arrive at the appropriate Corporation offices or via the Internet-based electronic grants system described below no later than 5:00 p.m. Eastern Daylight Time on July 31, 2002.

ADDRESSES: This year, you may submit your application in one of three ways: (1) By mailing a paper application; (2) by mailing your application on diskette; or (3) by using the Corporation's new Internet-based application system. That system is expected to be available after June 12. We would like to encourage applicants to use this new electronic way of applying for a grant. Check the Corporation's web site after June 12—*www.mlkday.org*—for complete information. If you intend to submit an electronic application, please check the website in a timely fashion, so that if you experience difficulty with the electronic submission, you may still submit a paper application. Paper applications may be obtained from the Corporation state office in your state unless otherwise noted or from the website at *www.mlkday.org.* See **SUPPLEMENTARY INFORMATION** section for Corporation state office addresses. Paper applications must be returned to the Corporation state office in your state unless otherwise noted. In lieu of a paper application, you may submit the application on a 3.5'' diskette in a text format only. Submitting your application on diskette will facilitate faster processing as well as reduce paper. Diskettes must be clearly marked with the program name and contact information. Application form SF 424 must be submitted along with the diskette. Address the paper application or diskette to: Martin Luther King, Jr. Day of Service, Corporation for National and Community Service (Appropriate State Address).

FOR FURTHER INFORMATION CONTACT: For further information, contact the person listed for the Corporation office in your state, unless otherwise noted. You may request this notice in an alternative format for the visually impaired by calling (202) 606–5000, ext. 278. The Corporation's T.D.D. number is (202) 565–2799 and is operational between the hours of 9 a.m. and 5 p.m. Eastern Daylight Time.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation, established by Congress in the 1993 amendments to the National and Community Service Act of 1990 (the Act) that engages Americans of all ages and backgrounds in service to communities. This service addresses the nation's education, public safety, environmental, or other human needs to achieve direct and demonstrable results with special consideration to service that affects the needs of children. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. The Corporation supports a range of national service programs including AmeriCorps, Learn and Serve America, and the Senior Corps. Section 12653(s) of the Act, as amended in 1994, authorizes the Corporation to make grants to share the cost of planning and carrying out service opportunities in conjunction with the federal legal holiday honoring the birthday of Martin Luther King, Jr. We will fund grants to support activities that will (1) get necessary things done in communities, (2) strengthen the communities engaged in the service activity, (3) reflect the life and teaching of Martin Luther King, Jr., (4) promote President Bush's call to service, and (5) begin or occur in significant part on the federal legal holiday (January 20, 2003).

The King Center for Nonviolent Social Change, Inc. also supports activities in honor of Dr. King's birth through the ''Beloved Community.'' The ''Beloved Community'' is a network of partners, organizations and entities that promote the King Holiday or work of Dr. King by disseminating his philosophy, providing direct service, nonviolence training, education or programs ensuring the

continuance of Dr. King's work. For more information about the Corporation and the programs it supports, go to *http://www.nationalservice.org.* For more information about the King Center, go to *http://www.thekingcenter.org.*

Getting things done means that projects funded under the Martin Luther King Jr. holiday grant will help communities meet education, public safety, environmental, or other human needs through direct service and effective citizen action. Accordingly, we expect well designed activities that meet compelling community needs and lead to measurable outcomes and impact.

Strengthening communities means bringing people together in pursuit of a common objective that is of value to the community. Projects should seek to engage a wide range of local partners in the communities served. You should design, implement, and evaluate projects with partners, including local and state King Holiday Commissions; the King Center's Beloved Community network; national service programs (AmeriCorps, Learn and Serve America, and the Senior Corps); Communities of Promise affiliated with America's Promise—the Alliance for Youth; youth leaders; community-based agencies; schools and school districts; Volunteer Centers affiliated with the Points of Light Foundation network and other volunteer organizations; local United Ways, non-profit organizations meeting urgent community needs, particularly those serving young people; communities of faith; businesses; foundations; state and local governments; labor organizations; and colleges and universities.

Reflecting the life and teaching of Martin Luther King, Jr. means demonstrating his proposition that, ''Everybody can be great because everybody can serve.'' Dr. King's concept of greatness, when expressed through acts of service, offers everyone an opportunity to experience a sense of worth and dignity. His example encourages all ages, races, colors, ethnic groups, genders, nationalities, and abilities to respond to those in need. We are challenged to adopt his philosophy in addressing the evils of discrimination, poverty and violence. Dr. King's abiding faith and earnest belief in the ''American Dream'' is exemplified by his commitment to justice and his willingness to serve unselfishly as evidenced by his statement, ''I can never be what I ought to be until you are what you ought to be.'' Dr. King's strategies and determination to use nonviolence as a means to transform the hearts of millions should be used as a rousing force to encourage others in their desire to be socially responsible through nonviolent direct actions—direct service. You should consider for this program service opportunities that foster cooperation and understanding among racial and ethnic groups, nonviolent conflict resolution, equal economic and educational opportunities, and social justice.

Promoting the President's Call to Service means providing opportunities for Americans to begin performing the 4000 hours—equivalent of two years—of community service that President Bush asked all Americans to do in his January 2002 State of the Union address. Projects submitted for funding should also provide opportunities for on-going service beyond the grant period. ''Volunteerism and community service are central to the history of our Nation. Americans have always been a decent and deeply generous people, willing to help those in need. That was true before September 11. It is truer today. The Federal Government did not create this civic spirit; but we do have a responsibility to help support and encourage it where we can.''—George W. Bush

The President calls on all citizens to perform some form of service to the Nation for the equivalent of at least two years of their lives. That service can be military or non-military; it can meet large national purposes or local community needs; it can be domestic or international; and it can be done over an uninterrupted period or by accumulating service hours over many years. The intent is to promote civic ties and to foster a lifelong ethic of good citizenship and service among Americans of all ages.

Begin or occur in significant part on the federal legal holiday means that a significant portion of the community service activities supported by the grant should occur on the holiday itself to strengthen the link between the observance of Martin Luther King, Jr.'s birthday, the federal legal holiday (January 20, 2003), and service that reflects his life and teaching.

The direct service you will perform on and in connection with the King holiday may include, but is not limited to, the following types of activities: tutoring children or adults, training tutors, feeding the hungry, packing lunches, delivering meals, stocking a food or clothing pantry, repairing a school and adding to its resources, translating books and documents into other languages, recording books for the visually impaired, restoring a public space, organizing a blood drive, registering bone marrow and organ donors, renovating low-income or senior housing, building a playground, removing graffiti and painting a mural, renovating or creating safe spaces for children who are out of school and whose parents are working, collecting oral histories of elders, running health fairs that provide health screenings, distributing immunization and health insurance information, gleaning and distributing fruits and vegetables, etc. Since involving young people in service is a priority of the Corporation for National and Community Service, you might consider challenging each young person serving to pledge to give back 100 hours of service in the next year, therefore qualifying for a President's Student Service Award and beginning to accumulate the 4000 hours of service encouraged by President Bush.

Although celebrations, parades, and recognition ceremonies may be a part of the activities that you plan on the holiday and lead to or celebrate a commitment to service, these activities do not constitute direct service under this grant and the grant will not fund such activities.

Other service activities we will consider in grant applications include, but are not limited to, the following: a day-of-service you design to produce a sustained long-term service commitment; community-wide serve-a-thons that bring a broad cross-section of people together in a burst of energy on one day of service, including schools or school districts that seek to involve all students and teachers in joint service; service-learning projects that link student service in schools and universities with community-based organizations; faith-based service collaborations that bring together communities of faith and secular human service programs (subject to the limitations listed below); and service projects that include a pledge or commitment for continued service throughout the year.

Grant funding will be available on a one-time, non-renewable basis for a budget period not to exceed seven months, beginning no sooner than November 1, 2002 and ending no later than June 30, 2003. By statute, the grants we provide for this project, together with all other federal funds you use to plan or carry out the service opportunity, may not exceed 30 percent of the total cost.

For example, if you request $2,500 in federal dollars, you must have a non-federal match of at least $5,833 (cash and/or in-kind contributions) and a total projected cost of at least $8,333. If you request $7,500 in federal dollars you must have a non-federal match of at

least $17,500 (cash and/or in-kind contributions) and a total projected cost of at least $25,000. In other words the total project cost multiplied by .30 is the maximum amount of money you can request from the federal government. (Total project cost minus federal dollars requested equals the required match). It may assist in the calculation to apply the formula as follows:

Total Project Cost x .30 = Maximum Federal Contribution.

Total Project Cost—Federal Dollars Requested = Non-Federal Match.

The non-federal match may include cash and in-kind contributions (including, but not limited to, supplies, staff time, trainers, food, transportation, facilities, equipment, and services) necessary to plan and carry out the service opportunity. You may not use any part of an award from the Corporation to fund religious instruction, worship or proselytization. You may not use any part of an award to pay honoraria or fees for speakers. You may not use any part of an award to support a celebration banquet or other activity that is not connected to the actual service.

The total amount of grant funds we will provide under this Notice will depend on the quality of applications and the availability of appropriated funds for this purpose.

Eligible Applicants

By law, any entity otherwise eligible for assistance under the national service laws is eligible to receive a grant under this announcement. The applicable laws include the National and Community Service Act of 1990, as amended, and the Domestic Volunteer Service Act of 1973, as amended.

Eligible applicants include, but are not limited to: nonprofit organizations, state commissions on service, volunteer centers, institutions of higher education, local education agencies, educational institutions, faith-based institutions, local or state governments, and private organizations that intend to utilize volunteers in carrying out the purposes of this program.

We especially invite applications from organizations with experience in—and commitment to—fostering service on Martin Luther King, Jr. Day, including state and local Martin Luther King, Jr. Commissions, the King Center's Beloved Community network, local education agencies, faith-based partnerships, Volunteer Centers affiliated with the Points of Light Foundation network, United Ways, Boys and Girls Clubs, Campfire Boys and Girls, and other community-based agencies.

Any grant recipient from a prior year Martin Luther King, Jr. Day of Service Initiative will be ineligible if it has been determined to be non-compliant with the terms of those grant awards.

Pursuant to the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), which engages in lobbying activities, is not eligible.

Overview of Application Requirements

If you are submitting a paper application or a 3.5'' diskette in text format, follow these instructions. Applicants should submit the following standard components for federal grants:

1. An Application for Federal Assistance, Standard Form 424.

2. A Project Narrative that includes:

a. An executive summary no longer than 1 page

b. A description of the needs and activities no longer than 4 pages that should address:

i. Getting necessary things done in communities;

ii. Strengthening the communities engaged in the service activity;

iii. Reflecting the life and teaching of Martin Luther King, Jr.;

iv. Promoting President Bush's call to service; and

v. Activities that begin or occur significantly on the legal federal holiday (January 20, 2003), but which may extend for the budget period (November 1, 2002 through June 30, 2003).

c. organizational capacity no longer than 1 page that must address:

i. Partnerships in the local community, city, state or region that you are engaging in support of the service activities

ii. Your organization's background and capacity to carry out this program

iii. How you propose to staff the activity

The project narrative portion of the application may not be longer than 6 single-sided pages. You must type double-spaced in a font no smaller than 12 point and number each page.

3. A Budget Narrative (specific instructions are provided in the application materials).

4. Budget Information—Non-Construction Programs (SF 424A) form in the application package.

5. A signed Assurances—Non-Construction Programs (SF 424B) form incorporating conditions attendant to the receipt of federal funding.

We must receive all applications by 5:00 p.m. Eastern Daylight Time, July 31, 2002, at the Corporation office in your state, unless otherwise noted. Applications that are mailed or delivered should be addressed as follows: Martin Luther King, Jr. Day of Service, Corporation for National and Community Service (appropriate state office address; see list of addresses provided below).

Please make sure that you plan adequate time for a mailed application to arrive on or before the due date. Please note that due to on-going delays in the mail system, you should consider submitting the application via an express mail delivery service other than the U.S. Postal Service. Applications postmarked on the due date will not be accepted. *You may not submit an application by facsimile.*

If you plan to submit an application on line, detailed instructions will be provided on the Internet. Applicants will complete the same standard components as listed above for federal grants. Applications must be entered and submitted on line by 5:00 p.m. Eastern Daylight Time, July 31, 2002.

To ensure fairness to all applicants, we reserve the right to take action, up to and including disqualification, in the event that your application fails to comply with the requirements relating to page limits, line-spacing, font size, and application deadlines.

Budget

Detailed instructions about the budget information you must provide are in the application materials or on line.

Selection Process and Criteria

We will review the applications initially to confirm that you are an eligible recipient and to ensure that your application contains the information we require and otherwise complies with the requirements of this notice. We will assess the quality of applications' responsiveness to the objectives included in this announcement based on the following criteria listed below:

1. Program Design, i.e. Needs and Activities (60%—limit to 4 typewritten pages) The proposal must demonstrate your ability to get necessary things done, strengthen communities, reflect the life and teaching of Martin Luther King Jr., promote President Bush's call to service and provide opportunities for on-going service, and include activities that begin or occur in significant part on the federal legal holiday, January 20, 2003.

2. Organizational Capacity (25%—limit to one typewritten page) Your application must demonstrate your organization's ability to carry out the activities described in the proposal, including the use of highly qualified staff.

3. Budget/Cost Effectiveness (15%—limit to one typewritten page) You must demonstrate how you will use this grant effectively, including the sources and uses of matching support. Estimates on the numbers of people serving and to be served must be included.

After evaluating the overall quality of proposals and their responsiveness to the criteria noted above, we will seek to ensure that applications we select represent a portfolio that is: (1) Geographically diverse, including projects throughout the five geographical clusters as designated by the Corporation; (2) representative of different population tracts, i.e. rural, urban, suburban; and (3) representative of a range of models of service projects.

Awards

We anticipate making selections under this announcement no later than September 1, 2002.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE STATE OFFICES

State	Name	Address	Phone
AK ...	Billie Caldwell	Jackson Federal Building, 915 Second Avenue, Suite 3190, Seattle, WA 98174–1103.	(206) 220–7736
AL ...	Betty Platt	Medical Forum, 950 22nd St., N., Suite 428, Birmingham, 35203	(205) 731–0027
AR ...	Opal Sims	Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201.	(501) 324–5234
AZ ...	Richard Persely	522 North Central, Room 205A, Phoenix, AZ 85004–2190	(602) 379–4825
CA ...	Kristen Haggins	11150 W. Olympic Blvd., Suite 670, Los Angeles, CA 90064	(310) 235–7421
CO ..	Bruce Cline	999 Eighteenth Street, Suite 1440 South, Denver, CO 80202	(303) 312–7950
CT ...	Romero Cherry	1 Commercial Plaza, 21st Floor, Hartford, CT 06103–3510	(860) 240–3237
DC ...	Rosetta Freeman-Busby	1201 New York Ave., NW., Suite 9107, Washington, DC 20525	(202) 606–5000, x485
DE ...	Malcolm Coles	Fallon Federal Bldg., 31 Hopkins Plaza, Suite 400–B, Baltimore, MD 21201.	(410) 962–4443
FL	Warren Smith	3165 McCrory Street, Suite 115, Orlando, FL 32803–3750	(407) 648–6117
GA ...	Daryl James	75 Piedmont Avenue, N.E., Room 902, Atlanta, GA 30303–2587	(404) 331–4646
HI	Lynn Dunn	300 Ala Moana Blvd., Room 6213, Honolulu, HI 96850–0001	(808) 541–2832
IA	Joel Weinstein	Federal Building, Room 917, 210 Walnut Street, Des Moines, IA 50309–2195.	(515) 284–4816
ID	V. Kent Griffitts	304 North 8th Street, Room 344, Boise, ID 83702–5835	(208) 334–1707
IL	Timothy Krieger	77 West Jackson Boulevard, Suite 442, Chicago, IL 60604–3511	(312) 353–3622
IN	Thomas Haskett	46 East Ohio Street, Room 226, Indianapolis, IN 46204–4317	(317) 226–6724
KS ...	Bruce Cline	444 S.E. Quincy, Room 260, Topeka, KS 66683–3572	(785) 295–2540
KY ...	Betsy Wells	600 Martin L. King Place, Room 372–D, Louisville, KY 40202–2230	(502) 582–6384
LA ...	Willard Labrie	707 Florida Street, Suite 316, Baton Rouge, LA 70801	(225) 389–0473
MA ..	Malcolm Coles	10 Causeway Street, Room 473, Boston, MA 02222–1038	(617) 565–7001
MD ..	Malcolm Coles	Fallon Federal Bldg., 31 Hopkins Plaza, Suite 400–B, Baltimore, MD 21201.	(410) 962–4443
ME ..	Shireen Tilley	1 Pillsbury Street, Suite 201, Concord, NH 03301–3556	(603) 225–1450
MI	Mary Pfeiler	211 West Fort Street, Suite 1408, Detroit, MI 48226–2799	(313) 226–7848
MN ..	Robert Jackson	431 South 7th Street, Room 2480, Minneapolis, MN 55415–1854	(612) 334–4083
MO ..	Zeke Rodriguez	801 Walnut Street, Suite 504, Kansas City, MO 64106	(816) 374–6300
MS ..	R Abdul-Azeez	100 West Capitol Street, Room 1005A, Jackson, MS 39269–1092	(601) 965–5664
MT ...	John Allen	208 North Montana Avenue, Suite 206, Helena, MT 59601–3837	(406) 449–5404
NC ...	Robert Winston	300 Fayetteville Street Mall, Raleigh, NC 27601–1739	(919) 856–4731
ND ...	John Pohlman	225 S. Pierre Street, Room 225, Pierre, SD 57501–2452	(605) 224–5996
NE ...	Anne Johnson	Federal Building, Room 156, 100 Centennial Mall North, Lincoln, NE 68508–3896.	(402) 437–5493
NH ...	Shireen Tilley	1 Pillsbury Street, Suite 201, Concord, NH 03301–3556	(603) 225–1450
NJ ...	Stanley Gorland	Scotch Plaza, 1239 Parkway Ave., Ewing Township, NJ 08628	(609) 989–2243
NM ..	Ernesto Ramos	120 S. Federal Place, Room 315, Sante Fe, NM 87501–2026	(505) 988–6577
NV ...	Craig Warner	4600 Kietzke Lane, Suite E–141, Reno, NV 89502–5033	(775) 784–5314
NY ...	Donna Smith	Leo O'Brien Federal Bldg., 1 Clinton Square, Suite 900, Albany, NY 12207.	(518) 431–4150
OH ..	Paul Schrader	51 North High Street, Suite 451, Columbus, OH 43215	(614) 469–7441
OK ...	Zeke Rodriguez	215 Dean A. McGee, Suite 324, Oklahoma City, OK 73102	(405) 231–5201
OR ..	Robin Sutherland	2010 Lloyd Center, Portland, OR 97232	(503) 231–2103
PA ...	Jorina Ahmed	Robert N.C. Nix Federal Bldg., 900 Market St., Rm 229, P.O. Box 04121, Philadelphia, PA 19107.	(215) 597–2806
PR ...	Loretta Cordova	150 Carlos Chardon Ave., Suite 662, San Juan, PR 00918–1737	(787) 766–5314
RI	Vincent Marzullo	400 Westminster Street, Room 203, Providence, RI 02903	(401) 528–5426
SC ...	Jerome Davis	1835 Assembly Street, Suite 872, Columbia, SC 29201–2430	(803) 765–5771
SD ...	John Pohlman	225 S. Pierre Street, Room 225, Pierre, SD 57501–2452	(605) 224–5996
TN ...	Jerry Herman	233 Cumberland Bend Dr., Suite 112, Nashville, TN 37228–1806	(615) 736–5561
TX ...	Jerry Thompson	300 East 8th Street, Suite G–100, Austin, TX 78701	(512) 916–5671
UT ...	Rick Crawford	350 S. Main Street, Room 504, Salt Lake City, UT 84101–2198	(801) 524–5411
VA ...	Thomas Harmon	400 North 8th Street, Suite 446, P. O. Box 10066, Richmond, VA 23240–1832.	(804) 771–2197
VI	Loretta Cordova	150 Carlos Chardon Ave., Suite 662, San Juan, PR 00918–1137	(787) 766–5314
VT ...	Shireen Tilley	1 Pillsbury Street, Suite 201, Concord, NH 03301–3556	(603) 225–1450
WA ..	John Miller	Jackson Federal Bldg., Suite 3190, 915 Second Ave., Seattle, WA 98174–1103.	(206) 220–7745

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE STATE OFFICES—Continued

State	Name	Address	Phone
WI ...	Linda Sunde	310 W. Wisconsin Ave., Room 1240, Milwaukee, WI 53203	(414) 297–1118
WV ..	Judith Russell	10 Hale Street, Suite 203, Charleston, WV 25301–1409	(304) 347–5246
WY ..	Patrick Gallizzi	308 West 21st Street, Room 206, Cheyenne, WY 82001–3663	(307) 772–2385

Program Authority: 42 U.S.C. 12653(s).

Dated: June 12, 2002.

Gary Kowalczyk,

Coordinator of National Service Programs.

[FR Doc. 02–15300 Filed 6–17–02; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information

AGENCY: Corporation for National and Community Service.

ACTION: Notice of proposed guidelines and request for comments.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') is seeking comments on its draft Information Quality Guidelines. These Information Quality Guidelines describe the Corporation's pre-dissemination information quality control and an administrative mechanism for requests for correction of information publicly disseminated by the Corporation. The proposed Information Quality Guidelines are posted on the Corporation's Web site: *http://www.ofheo.gov*.

DATES: Written comments regarding the Corporation's Information Quality Guidelines are due by August 19, 2002.

ADDRESSES: Send written comments to David Spevacek, Chief Information Officer, Corporation for National and Community Service, 1201 New York Ave., NW, Eighth Floor, Washington, DC 20525. Alternatively, comments may be sent by electronic mail to *infoquality@cns.gov*.

FOR FURTHER INFORMATION CONTACT: David Spevacek, Chief Information Officer, Corporation for National and Community Service, 1201 New York Ave., NW, Eighth Floor, Washington, DC 20525, telephone (202) 606–5000, ext. 339 or *dspevacek@cns.gov*. T.D.D. (202) 565–2799.

Dated: June 13, 2002.

David Spevacek,

Chief Information Officer.

[FR Doc. 02–15355 Filed 6–17–02; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 19, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Assistant Secretary of Defense for Health Affairs (OASD/HA), TRICARE Management Activity (TMA), Operations Directorate (OD), Dental Programs, ATTN: COL Mary C. Concilio, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address, or call OASD/HA/TMA/OD/Dental Programs at 703–681–0064.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; OMB Number: DoD/Active Duty/Reserve Forces Dental Examination; Associated Form—DoD/Reserve Forces Dental Examination; OMB No. 0720–0022.

Needs and Uses: The information collection requirement is necessary to obtain and record the dental health status of members of the Armed Forces. This form enables civilian dentists to record the results of their examination findings and provide the information to the member's military organization. The military organizations are required by Department of Defense policy to track the dental health status of their members.

Affected Public: Business or other profit; Not-for-profit institutions.

Annual Burden Hours: 44,250.

Number of Respondents: 885,000.

Responses Per Respondent: 1.

Average Burden Per Response: 3 minutes.

Frequency: Annual.

Summary of Collection Information

Respondents are medical professionals who provide dental services to the general public. Members of the Armed Forces of the United States are the recipients of the dental examination. The Armed Forces Active and Reserve component members must maintain their dental health at a predetermined level to prevent dental problems while deployed to a military operation. Reserve component and CONUS remote Active component members usually receive dental care from civilian dentists; therefore, civilian dentists complete the form. Following a routine dental examination, the dentist reviews the categories listed on the form and selects the number corresponding to the condition that best describes the dental health of the patient. If dental problems can be identified, they are indicated on the form. Once the form is complete and the dentist signs it, the member forwards the form to the parent organization. The information on the form is incorporated into a database, and the form is maintained in the health record until no longer needed.

Dated: June 6, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–15222 Filed 6–17–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 18, 2002.

Title and OMB Number: Community College of the Air Force Alumni Survey; OMB Number 0701–0136.

Type of Request: Extension.

Number of Respondents: 500.

Responses per respondent: 1.

Annual Responses: 500.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 167.

Needs and Uses: The information collection requirement is necessary to determine how effectively the institution is meeting its mission and also identify areas needing improvement. Survey results will provide data on the usefulness and acceptance of the Community College of the Air Force degree in the civilian sector. Documenting the institution's effectiveness is also required to maintain the Community College of the Air Force's regional accreditation. Respondents will be separated and retired Community College of the Air Force graduates.

Affected Public: Individuals or Households.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jackie Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 12, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–15221 Filed 6–17–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 18, 2002.

Title, Form and OMB Number: Department of Defense Standard Tender of Freight Services; MT Form 364–R; OMB Number 0704–0261.

Type of Request: Reinstatement.

Number of Respondents: 434.

Responses per Respondent: 50 (average).

Annual Responses: 21,563.

Average Burden per Response: 15 minutes.

Annual Burden hours: 5,391.

Needs and Uses: The information derived from the DoD tenders on file with the Military Traffic Management Command (MTMC) is used by MTMC subordinate commands and DoD shippers to select the best value carriers to transport surface freight shipments. Freight carriers furnish information in a uniform format so that the Government can determine the cost of transportation, accessorial, and security services, and select the best value carriers for 1.1 million Bill of Lading shipments annually. The DoD tender rate and other pertinent tender data are noted on the Bill of Lading at the time of shipment. The DoD tender is the source document for the General Services Administration post-shipment audit of carrier freight bills.

Affected Public: Business or Other For-Profit.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 10, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–15223 Filed 6–17–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–20]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency; Department of Defense.

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 02–20 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 11, 2002.

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

4 JUN 2002
In reply refer to:
I-02/003482

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. 02-20, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Kuwait for defense articles and services estimated to cost $58 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. 02-20

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Kuwait**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$51 million
Other	$ 7 million
TOTAL	$58 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 80 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM), 60 AIM-120C Launch Rails, two Captive Air Training Missiles, flight test instrumentation, software updates to support AMRAAM operational and training devices, missile containers, aircraft modification and integration, spare and repair parts, support and test equipment, publications and technical documentation, maintenance and pilot training, contractor support, other related elements of logistical and program support**

(iv) **Military Department: Air Force (YBB)**

(v) **Prior Related Cases, if any: none**

(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: 4 JUN 2002**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Kuwait - AIM-120C Advanced Medium Range Air-to-Air Missiles

The Government of Kuwait has requested a possible sale of 80 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM), 60 AIM-120C Launch Rails, two Captive Air Training Missiles, flight test instrumentation, software updates to support AMRAAM operational and training devices, missile containers, aircraft modification and integration, spare and repair parts, support and test equipment, publications and technical documentation, maintenance and pilot training, contractor support, other related elements of logistical and program support. The estimated cost is $58 million.

This sale will strengthen the military ties between the U.S. and the State of Kuwait (Kuwait). Strategically located in the Persian Gulf, Kuwait has been a friendly nation for over thirty years. In the aftermath of the Gulf crisis, Kuwait further opened access to vital port facilities and air bases necessary for future coalition success in the region. Kuwait's location at the northwestern corner of the Persian Gulf makes it an essential partner in preserving freedom of navigation in the Gulf and a key participant in regional strategic planning. This sale will strengthen Kuwait as a coalition partner by providing greater interoperability with U.S., and other coalition forces in the region.

Kuwait is threatened by a hostile neighbors with credible air, land, and sea forces. While the nation depends on external support, the Kuwaiti Air Force (KAF) must have adequate numbers and capabilities to protect its vital resources (runways, support facilities, pre-positioned materials, petroleum production and storage, etc.) during the early part of an invasion until allies can arrive with reinforcements.

Due to its limited population, Kuwait requires a multi-role fighter aircraft that is capable of performing all missions while maintaining readiness with an efficient maintenance and support infrastructure. A large portion of the force must be allocated to defend against an aerial attack. To defend against large-scale attacks and attacks by high speed, low-flying cruise missiles, these aircraft must be able to detect, track, and engage targets accurately at long range.

The KAF must be able to respond immediately to any potential aggression, regardless of the time of day or weather because of the close proximity of the threat. The systems should be fully capable of finding and destroying air, maritime, and ground targets at night and in poor weather.

While Kuwait does not have the resources to protect itself against a prolonged invasion, they are attempting to equip their air force with sufficient resources and capabilities to stall an invasion long enough for other coalition forces to arrive. Protection of critical assets such as air and sea port facilities is essential to complete this reinforcement.

The prime contractor will be Raytheon Company of Goeleta, California. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will require the assignment of two U.S. Government representatives to Kuwait for approximately two years to assist in delivery, acceptance, and deployment of the missiles. There will be three each U.S. Government and contractor representatives for one-week intervals, twice annually, to participate in program management and technical reviews. Contractor representatives specializing in various skills and disciplines will be required to provide in-country support for an extended period of time. The specific requirements for this support will be established during program definition between representatives of the USG and Kuwait.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-20

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 AIM-120C Advanced Medium Range Air-to-Air Missile (AMRAAM) is a supersonic, air launched, aerial intercept, guided missile featuring digital technology and micro-miniature solid-state electronics. The missile employs active radar target tracking, proportional navigation guidance, and active Radio Frequency target detection. It can be launched day or night, in any weather and increases pilot survivability by allowing the pilot to disengage after missile launch and engage other targets. AMRAAM capabilities include lookdown/shootdown, multiple launches against multiple targets, resistance to Electronic Countermeasures, and interception of high- and low-flying and maneuvering targets. Information on the AIM-120 missile ranges from unclassified to secret.

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 Kuwait can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–15224 Filed 6–17–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–21]

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 P.L. 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 02–21 with attached transmittal and policy justification.

Dated: June 11, 2002.

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

4 JUN 2002
In reply refer to:
I-02/004177

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. 02-21, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $108 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. 02-21

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States pursuant to P.L. 96-8

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$108 million
TOTAL	$108 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: three (3) AN/MPN-14(SS) radar sets, spare and repair parts, support and test equipment, radar modification kits, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics support

(iv) Military Department: Air Force (DTB)

(v) Prior Related Cases, if any: none

(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: none

(viii) Date Report Delivered to Congress: 4 JUN 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States – AN/MPN-14(SS) Radar Sets

The Taipei Economic and Cultural Representative Office in the United States has requested a possible sale of three (3) AN/MPN-14(SS) radar sets, spare and repair parts, support and test equipment, radar modification kits, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics support. The estimated cost is $108 million.

This sale is consistent with United States law and policy as expressed in Public Law 96-8.

The proposed sale of radar sets will provide the recipient air traffic control (specifically, radar approach control) capabilities in and around their military's airfields. The recipient will have no difficulty absorbing these radar sets into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be ITT Industries of Van Nuys, California. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to recipient.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–15225 Filed 6–17–02; 8:45 am]
BILLING CODE 5001–08–C

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7233–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting Under EPA's Climate Leaders—EPA ICR No. xx

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Reporting Requirements Under EPA's Climate Leaders—EPA ICR No. xx. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 19, 2002.

ADDRESSES: U.S. Environmental Protection Agency, Climate Protection Partnerships Division, 1200 Pennsylvania Avenue, NW., (6202J), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Tom Kerr, Telephone No. (202) 564–0047, Facsimile No. (202) 565–2134; E-mail: *kerr.tom@epa.gov*. Interested parties can obtain a copy of this ICR without charge.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are corporations that voluntarily agree to work with EPA to measure and record their greenhouse gas (GHG) emissions.

Title: Reporting Requirements Under EPA's Climate Leaders—EPA ICR No. xx.

Abstract: In an effort to aid U.S. implementation of its commitments in the United Nations Framework Convention on Climate Change, the President announced a Climate Change Strategy on February 14, 2002, wherein he set a national U.S. GHG intensity goal of 18% by 2012. Part of that strategy challenges companies to set GHG reduction goals by working with EPA through the voluntary Climate Leaders program. EPA has developed this ICR to ensure that the program is credible by obtaining authorization to collect information from Climate Leaders Partners to ensure the Partners are meeting their GHG goals.

EPA has developed this ICR to obtain authorization to collect information from companies participating in Climate Leaders. Companies that join Climate Leaders voluntarily agree to the following: designating a Climate Leaders liaison; negotiating a corporate GHG reduction goal; and reporting to EPA, on an annual basis, the company's progress toward their reduction goal via Climate Leaders inventory protocol reporting forms. The information contained in the inventories of the companies that join Climate Leaders may be considered confidential business information and is maintained as such. EPA uses the data obtained from the companies to assess the success of the program in achieving its GHG reduction goals.

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.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: The projected hour burden for this collection of information is as follows:

Average annual reporting burden: 63 hours.

Average annual recordkeeping burden: 0 hours.

Average burden hours/response: 7 hours for a Letter of Intent (one-time burden); 56 hours for the annual inventory.

Frequency of response: one per respondent per year.

Estimated number of respondents: 30.

Cost burden to respondents:

Estimated total annualized cost burden: $6,163.

Total labor cost: $6,163.

Total capital and start-up costs: $0.

Estimated total operation and maintenance costs: $0.

Purchase of services cost: $0.

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.

Dated: June 6, 2002.

Thomas M. Kerr,

EPA Office of Air & Radiation.

[FR Doc. 02–15330 Filed 6–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7233–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Investigation Into Possible Noncompliance of Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Investigation into Possible Noncompliance of Motor Vehicles; OMB Control Number 2060–0086; expiration date June 30, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 18, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 0222.06 and OMB Control No. 2060–0086, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *auby.susan@epamail.epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0222.06. For technical questions about the ICR contact Richard W. Nash, Certification and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48103, (734) 214–4412, *nash.dick@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: Investigation into Possible Noncompliance of Motor Vehicles; OMB Control Number 2060–0086; expiration date June 30, 2002, EPA ICR Number 0222.06. This is a request for extension of a currently approved collection.

Abstract: EPA tests in-use vehicles to verify that they meet emission standards during their useful lives. Vehicle types that do not comply are subject to recall and repair at the manufacturer's expense. In order to insure that appropriate vehicles are tested, EPA must make a very limited inquiry of their owners/lessees concerning vehicle condition.

Information collected is used to assure that vehicles procured meet certain criteria. For example, since a manufacturer's responsibility to recall passenger cars is limited to 10 years of age or 100,000 miles of use, vehicles tested to establish potential recall liability must also meet those criteria. Other testing programs and vehicle types have different criteria.

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. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published March 11, 2002, one comment was received.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 20 minutes per response, a total of 600 hours annually. 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.

Respondents/Affected Entities: 1800.

Estimated Number of Respondents: 1800.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 600.

Estimated Total Annualized Capital, O&M Cost Burden: None.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0222.06 and OMB Control No. 2060–0086 in any correspondence.

Dated: June 3, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–15331 Filed 6–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7232–9]

Proposed Effluent Guidelines Program Plan for 2002/2003

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Effluent Guidelines Program Plan; request for comments.

SUMMARY: Today's notice presents and invites comment on EPA's proposed Effluent Guidelines Program Plan for 2002/2003. Under the Clean Water Act (CWA), EPA establishes national regulations, termed ''effluent guidelines,'' to reduce pollutant discharges from industrial facilities to surface waters and publicly owned treatment works (POTWs). The proposed Effluent Guidelines Program Plan describes the Agency's ongoing effluent guidelines development efforts.

DATES: EPA must receive comments on the proposed effluent guidelines plan by July 18, 2002.

ADDRESSES: Submit written comments to Ms. Patricia Harrigan at the following address: Office of Water, Engineering and Analysis Division (4303T), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Comments submitted via hand delivery or Federal Express may be sent to the following address: U.S. EPA, EPA West, Room 6221, 1301 Constitution Avenue, NW, Washington, DC 20004. For additional information on how to submit comments, see ''How to Submit Comments'' in the Supplementary Information section of this notice.

The public record for this proposed plan has been established under docket number W–01–12 and is located in EPA's Water Docket, East Tower Basement (Room EB 57), 401 M Street SW, Washington, DC 20460. The record is available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, call (202) 260–3027 to schedule an appointment. You may have to pay a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Patricia Harrigan at (202) 566–1666 or *harrigan.patricia@epa.gov,* or Jan Matuszko at (202) 566–1035 or *matuszko.jan@epa.gov.*

How To Submit Comments

EPA encourages submission of comments using e-mail. Please send comments via e-mail to *harrigan.patricia@epa.gov.* Electronic comments must specify docket number W–01–12 and must be submitted as an ASCII, Word or WordPerfect file avoiding the use of special characters or any form of encryption. No confidential business information (CBI) should be sent via e-mail.

If you elect to mail your comments, please send an original and 3 copies of your comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimilies (faxes) will be accepted.

I. Regulated Entities

Today's proposed Effluent Guidelines Program Plan for 2002/2003 does not contain regulatory requirements. It identifies industrial categories for which EPA expects to develop or revise effluent limitations guidelines and standards and sets forth the schedules for those rulemakings. Entities that could be affected by regulations developed under this Plan, as proposed, are shown in Table 1 below.

TABLE 1.—ENTITIES POTENTIALLY AFFECTED BY FORTHCOMING EFFLUENT GUIDELINES REGULATIONS

Category of entity	Examples of potentially affected entities
Industrial, Commercial, or Agricultural.	Metal Products and Machinery (including electroplating, metal finishing); builders and developers engaged in construction, development, and redevelopment; Feedlots (swine, poultry, dairy and beef cattle); Aquatic Animal Production (fish hatcheries and farms); and Meat Products (slaughtering, rendering, packing, processing of red meat and poultry); and Pulp and Paper (dissolving mills).
Federal Government	Metal Products and Machinery (including electroplating, metal finishing); builders and developers engaged in construction, development, and redevelopment.
State Government	Metal Products and Machinery (including electroplating, metal finishing); builders and developers engaged in construction, development, and redevelopment.
Local Government	Metal Products and Machinery (including electroplating, metal finishing); builders and developers engaged in construction, development, and redevelopment.

II. Legal Authority

Today's notice is published under the authority of section 304(m) of the CWA, 33 U.S.C. 1314(m).

III. Effluent Guidelines Program Background

The CWA directs EPA to promulgate effluent limitations guidelines and standards that, for most pollutants, reflect the level of pollutant control achievable by the best available technologies economically achievable for categories or subcategories of industrial point sources. See CWA sections 301(b)(2), 304(b), 306, 307(b), and 307(c). For point sources that introduce pollutants directly into the Nation's waters (i.e., direct dischargers), the limitations and standards promulgated by EPA are implemented in National Pollutant Discharge Elimination System (NPDES) permits. See CWA sections 301(a), 301(b), and 402. For sources that discharge to POTWs (i.e., indirect dischargers), EPA promulgates pretreatment standards that apply directly to those sources and are enforced by POTWs backed by State and Federal authorities. See CWA sections 307(b) and (c).

Section 304(m) requires EPA to publish a Plan every two years that consists of three elements. First, under section 304(m)(1)(A), EPA is required to establish a schedule for the annual review and revision of existing effluent guidelines in accordance with section 304(b). Section 304(b) applies to effluent limitations guidelines for direct dischargers and requires EPA to revise such regulations as appropriate. Second,

under section 304(m)(1)(B), EPA must identify categories of sources discharging toxic or nonconventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or new source performance standards (NSPS) under section 306. Finally, under section 304(m)(1)(C), EPA must establish a schedule for the promulgation of effluent limitations guidelines under section 304(b)(2) and NSPS for the categories identified under subparagraph (B) not later than three years after being identified in the section 304(m) plan. Section 304(m) does not apply to pretreatment standards for indirect dischargers, which EPA promulgates pursuant to sections 307(b) and 307(c) of the CWA.

On October 30, 1989, Natural Resources Defense Council, Inc., and Public Citizen, Inc., filed an action against EPA in which they alleged, among other things, that EPA had failed to comply with CWA section 304(m). Plaintiffs and EPA agreed to a settlement of that action in a Consent Decree entered on January 31, 1992. The consent decree, which has been modified several times, established a schedule by which EPA will propose and take final action for eleven point source categories identified by name in the decree, see Consent Decree, pars. 2(a) and 4(a), and for eight other point source categories identified only as new or revised rules, numbered 5 through 12, see Consent Decree par. 5(a). The Decree also established deadlines for EPA to complete studies of eight identified and three unidentified point source categories. *See* Consent Decree, par. 3(a).

The last date for EPA action under the Decree, as modified, is June 2004. The Decree provides that the foregoing requirements shall be set forth in EPA's section 304(m) plans. *See* Consent Decree, pars. 3(a), 4(a), 5(a). The Consent Decree provides that section 304(m) plans issued subsequent to the decree that are consistent with its terms shall satisfy EPA's obligations under section 304(m) with respect to the publication of such plans. *See* Consent Decree, par. 7(b).

IV. Proposed Effluent Guidelines Program Plan for 2002/2003

Today's proposed Plan describes EPA's current effluent guidelines rulemaking activities. It is the last Effluent Guidelines Program Plan to be developed while EPA is operating under the 1992 Consent Decree described in Section III above.

Table 2 identifies the new or revised effluent guidelines currently under development and the schedules for proposal and final action.

TABLE 2.—EFFLUENT GUIDELINES CURRENTLY UNDER DEVELOPMENT

Category	Federal Register citation (date) or deadline for proposal	Final action date
Metal Products and Machinery	66 FR 424 (Jan. 3, 2001)	12/02
Concentrated Animal Feeding Operations (poultry, swine, beef, and dairy subcategories).	66 FR 2959 (Jan. 12, 2001)	12/15/02
Meat Products	67 FR 8581 (Feb. 25, 2002)	12/03
Construction and Development	05/15/02	03/04
Aquatic Animal Production	08/02	06/04
Pulp, Paper, and Paperboard (dissolving kraft (Subpart A) and dissolving sulfite (Subpart D)).	58 FR 44078 (Dec. 17, 1993)	09/04

In previous Effluent Guideline Plans, EPA had indicated its intention to take final action on its 1993 proposal to revise effluent guidelines for eight subcategories of the pulp, paper, and paperboard industry (Subparts C and F through L). At this time, however, EPA is not planning to revise effluent guidelines for these subcategories for a variety of reasons. For example, it appears that more stringent conventional pollutant limitations for these subcategories would not pass the Best Conventional Pollutant Control Technology ''cost-reasonableness'' test, which is explained at 51 FR 24974 (July 1986). In addition, EPA does not see the need at this time to promulgate national categorical best management practices to control spills and leaks of pulping liquors for these subcategories; permitting authorities can continue to impose best management practices on a case-by-case basis, as appropriate, under 40 CFR 122.44(k). As with all currently regulated industries, EPA will make the decision to move forward with data collection and analysis for all of these subparts (including possible guidelines revisions) using a broader priority-setting process the Agency is developing for its future effluent guidelines planning evaluations.

V. Future of the Effluent Guidelines Program

For the past ten years, the 1992 Consent Decree has greatly influenced EPA's management of the effluent guidelines program and has required the Agency to develop or revise a specified number of effluent guidelines within specified schedules. June 2004 is the last Consent Decree deadline for taking final action on an effluent guideline started under the Decree. The 1992 Consent Decree will terminate when this obligation is satisfied.

The termination of the Consent Decree offers EPA, interested stakeholders, and the public the chance to evaluate the existing program and to consider how national industrial regulations can best meet the needs of the broader National Clean Water Program in the years ahead. EPA is drafting a strategy setting forth a planning process by which EPA will conduct the review of national effluent guidelines and establish priorities to address the water quality challenges of the 21st century.

Integral to any planning process is the need to efficiently allocate scarce resources among competing priorities. This is particularly the case for a governmental agency such as EPA, which has the responsibility to assure that both public and private funds for regulatory compliance are spent to address the highest risks to human health and the environment. EPA also believes that its process for setting priorities must be completely transparent. In keeping with these goals, the draft strategy will describe how EPA will work with other interested parties to assess the risks posed by industrial discharges and to identify the best approach to address these risks (*i.e.,* through effluent guidelines or other tools).

EPA expects that development and implementation of this strategy will require a significant Agency investment in research, planning, and outreach. EPA plans to publish this draft strategy later this year, and will seek to engage a broad range of interested parties in a

discussion on the draft strategy. EPA intends to first use the process described in the strategy as the basis for its 2004/2005 Effluent Guidelines Program Plan.

VI. Request for Comment

EPA invites public comment on the proposed Effluent Guidelines Program Plan for 2002/2003 and on all other aspects of today's notice.

Dated: June 11, 2002.

G. Tracy Mehan, III,

Assistant Administrator for Water.

[FR Doc. 02–15329 Filed 6–17–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 11, 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 18, 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, 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.: 3060–0795.

Title: Associate WTB Call Signs and Antenna Registration Numbers with Licensee's FRN.

Form No.: FCC Form 606.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, state, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents: 429,000.

Estimated Time Per Response: 1 hour.

Frequency of Response: Third party disclosure requirement, on occasion reporting requirement.

Total Annual Burden: 429,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The FCC Form 606 has been revised to make various changes to update the title of the form, mailing and web site addresses, removing the Taxpayer Identification Number (TIN) information and adding FCC Registration Number (FRN) information for licensees and antenna structure owners. The information will be used to populate the Universal Licensing System (ULS) with a unique identifying number (FRN) and require licensees to supply it when doing business with the Commission. This requirement is to facilitate compliance with the Debt Collection Improvement Act of 1996 and the Commission's internal CORES system.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–15214 Filed 6–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1412–DR]

Missouri; Amendment No. 6 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: June 10, 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:

Boone and Livingston Counties for Public Assistance.

Camden, Cape Girardeau, Douglas, Mississippi, Perry, Scott, and Stoddard Counties for Public Assistance (already designated 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. 02–15338 Filed 6–17–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1412–DR]

Missouri; Amendment No. 7 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 for the State of Missouri (FEMA–1412–DR), dated May 6, 2002, and related determinations.

EFFECTIVE DATE: June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Rich 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 the incident period for this disaster is closed effective June 10, 2002.

(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. 02–15339 Filed 6–17–02; 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 July 2, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. John Steven Schnoor and Carmela Rose Schnoor, both of Hildreth, Nebraska; to acquire voting shares of Hildreth State Company, Inc., Hildreth, Nebraska, and thereby indirectly acquire voting shares of State Bank of Hildreth, Hildreth, Nebraska.

Board of Governors of the Federal Reserve System, June 12, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–15215 Filed 6–17–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Board of Governors of the Federal Reserve System

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 p.m., Monday, June 24, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 14, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–15489 Filed 6–14–02; 3:39 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Account Number: 4154–05]

Assistant Secretary for Planning and Evaluation; Notice Inviting Applications for New Awards for a National Poverty Research Center and Area Poverty Research Centers for Fiscal Year 2002

AGENCY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE), HHS.

ACTION: Announcement of the availability of funds and request for applications for a cooperative agreement to establish a National Poverty Research Center and Area Poverty Research Centers.

SUMMARY: ASPE plans to fund one National Poverty Center and three Area Poverty Centers. The National Poverty Center will plan and conduct a broad program of policy research and mentoring of emerging scholars to describe and analyze national, regional and state environment (e.g., economics, demographics) and policies affecting the poor, particularly those families with children who are poor or at-risk of being poor. This research and evaluation program will focus on important and emerging social policy issues associated with the nature, causes, correlates, and effects of income dynamics, poverty, individual and family functioning and child well-being.

The Area Poverty Centers cooperative agreements are for qualified institutions to provide a focused agenda expanding our understanding of the causes, consequences and effects of poverty in local geographic areas or specific substantive areas, especially in states or regional areas of high concentrations of poverty. These cooperative agreements are intended to create a research opportunity for scholars and institutions otherwise unlikely to participate extensively in HHS programs to support the Nation's poverty research effort. It is anticipated that investigators supported under the Area Poverty Centers will benefit from the opportunity to conduct independent research; that the grantee institutions will benefit from participation in the diverse extramural programs of HHS; and that students will benefit from exposure to and participation in research and be encouraged to pursue graduate studies and careers in the social and behavioral sciences with a focus on poverty.

CLOSING DATE: The closing date for submitting applications under this announcement is August 19, 2002. Please email Audrey Mirsky-Ashby at *Audrey.Mirsky-Ashby@hhs.gov* by July 18, 2002 to inform the government of your intent to submit an application. Include the name of your organization and whether you are competing for the National Center award or for an Area Center award. Providing notice of intent to submit is not a requirement for submitting an application. However, a notice of intent to submit will help the federal government in the planning for the review process.

ADDRESSES: The National Institute of Child Health and Human Development (NICHD) will be servicing these grants for ASPE. Applications should be submitted to Michael J. Loewe, Deputy Grants Management Officer, Grants Management Branch, National Institute of Child Health and Human Development, U.S. Department of Health and Human Services, 6100 Executive Boulevard, Room 8A01, Bethesda, Maryland 20892–7510 (Regular Mail), Rockville, Maryland 20852 (Express Mail), Phone: (301) 435–6995. Administrative questions will be

accepted and responded to up to ten working days prior to closing date of receipt of applications.

You will receive email confirmation to notify you that your application was received within 14 days of the closing date. If you do not receive confirmation within 14 days of the closing date, please contact Michael J. Loewe at the address provided above.

The printed **Federal Register** notice is the only official program announcement. Any corrections to this announcement will be published in the **Federal Register** as well as published on the ASPE World Wide Web Pages at *http://aspe.hhs.gov/funding.htm.* Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

FOR FURTHER INFORMATION CONTACT: Administrative questions should be directed to Michael Loewe at the address or phone number listed above. Technical questions should be directed to Don Oellerich, HHS, Office of Human Services Policy, Telephone: (202) 690–6805. Written technical questions should be addressed to Dr. Oellerich at the Department of Health and Human Services, ASPE/HSP, 200 Independence Avenue, SW., Room 404E, Hubert H. Humphrey Building, Washington, DC 20201 or faxed to 202–690–6562. If you send your question in writing, please call to confirm receipt. Technical questions will be accepted and responded to up to ten working days prior to the closing date of receipt of applications.

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background—Legislative authority, Eligible Applicants, Project History and Purpose, Available Funds, Matching Requirements, and Project and Budget Period; Part II: Awardee Responsibilities for the National Poverty Research Center, Awardee Responsibilities for the Area Poverty Research Centers, ASPE Responsibilities, Joint Responsibilities, Arbitration Procedures, Rights to Data; Part III: The Review Process—Intergovernmental Review, Initial Screening, Competitive Review and Evaluation Criteria; Part IV: The Application—General Information, Application Development—The National Center, Application Development—Area Poverty Centers, Application Submission, Disposition of Applications, Catalog of Federal Domestic Assistance (CFDA) Number, and Components of a Complete Application.

Part I. Background

A. Legislative Authority

This cooperative agreement is authorized by Section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under Public Law from funds appropriated under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002 (Public Law 107–116).

B. Eligible Applicants

For the National Poverty Research Center (also referred to as the National Center) the Department seeks applications from universities or other post-secondary degree granting entities. (For-profit organizations are advised that no cooperative agreement funds may be paid as profit to any recipient of a grant or subgrant. Profit is any amount in excess of allowable direct and indirect costs of the grantee). Eligible applicants for Area Poverty Research Centers (also referred to as the Area Centers) are restricted to colleges and universities offering baccalaureate or advanced degrees in the social and behavioral sciences. Scholars and researchers working in Area eligible institutions located in geographic areas where poverty is prevalent and concentrated are encouraged to participate in this program.

C. Project History and Purpose

These awards (cooperative agreements) replace the current cooperative agreements with the Joint Center for Poverty Research (JCPR) at Northwestern University and the University of Chicago, and the Institute for Research on Poverty (IRP) at the University of Wisconsin. The mission of the poverty centers includes (1) expanding the knowledge of the causes and consequences of poverty as well as policy responses to ameliorate poverty and its impacts on Americans, (2) providing a core of multidisciplinary researchers, as well as a national network of scholars who focus their research on poverty and the poor (3) developing and training of future social science researchers whose work focuses on poverty and the poor, (4) continuation of work on the improvement of methods and data to permit a fuller understanding of the causes and consequences of poverty and the social policies and programs meant to alleviate it, and (5) maintaining a network for the dissemination of findings to the policy and research communities through newsletters, working papers, special reports and briefings. (Information on the current centers is available on their respective websites: *www.jcpr.org* and *www.ssc.wisc.edu/irp*) We expect the Centers funded under this announcement to provide leadership through innovative basic and applied research, long-term policy options and evaluation, and mentoring to increase the number and diversity of poverty scholars. The winning applicant(s) will be expected to carry out a program that continues a strong scholarly tradition and concern for poverty. There are no specific projects that must be continued from the current Centers under this award.

D. Available Funds

The Assistant Secretary has available a total of $2,000,000 for the first year of awards for a national poverty research center and for the area poverty research centers. ASPE anticipates providing approximately one award of approximately $1 million for a National Poverty Research Center and three awards of between $300,000 and $400,000 each for the Area Poverty Research Centers. If additional funding becomes available in fiscal year 2002, other centers may be funded. Although multiple awards are anticipated, nothing in this announcement restricts the ability of the Assistant Secretary for Planning and Evaluation to make one award or to make lesser award(s).

E. Matching Requirements

Awardees must provide at least 5 percent of the total approved cost of the project. The total approved cost of the project is the sum of the federal share and the nonfederal share. The non-federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their matching requirements through cash contributions. For example, an awardee with a project with a total budget (both direct and indirect costs) of $400,000 may request up to $380,000 in federal funds. Matching requirements cannot be met with funds from other federally-funded programs.

If a proposed project activity has approved funding support from other funding sources, the amount, duration, purpose, and source of the funds should be indicated in materials submitted under this announcement. If completion of the proposed project activity is

contingent upon approval of funding from other sources, the relationship between the funds being sought elsewhere and from ASPE should be discussed in the budget information submitted as a part of the abstract. In both cases, the contribution that ASPE funds will make to the project should be clearly presented.

F. Project and Budget Period

ASPE expects to fund the National Poverty Research Center(s) for a period of five (5) years and the Area Poverty Research Centers for a period of three (3) years. The first year funding for national poverty research center will be up to $1,000,000 (combined direct and indirect funding). We expect a total funding of approximately $5 million over the five-year funding period. The first year of funding for Area Centers will be between $300,000 and $400,000 (combined direct and indirect funding). We expect a total funding of $3 million over the three-year period. Cooperative Agreements are assistance mechanisms and subject to the same administrative requirements as grants; however, they are different from both a grant and a contract. Compared to a grant, they allow more involvement and collaboration by the government in the affairs of the project, but provide less direction of project activities than a contract. The Terms of Award are in addition to, not in lieu of, otherwise applicable guidelines and procedures.

Applications are to include separate budget estimates for each of the five or three years, if they expect funding levels to be substantially different in subsequent years. Legislative support for continued funding of the Centers cannot be guaranteed and future year funding is subject to future appropriations and approval of the Assistant Secretary. ASPE expects, however, that the Centers will be supported during future fiscal years at an annual level of effort commensurate with the initial period.

The award pursuant to this announcement will be made on or about September 15, 2002.

Part II—Responsibilities of the Awardee and the Federal Government in the Establishment and Operation of a National Poverty Research Center and Area Poverty Research Centers

A. Awardee Responsibilities for the National Poverty Research Center

The Awardee should develop and conduct a program which appropriately balances core infrastructure, research, mentoring of emerging scholars, and dissemination activities directed to understanding the economic security and well-being of individuals, families and children. The Awardee should have the primary and lead responsibility to define objectives and approaches, and to plan research, conduct studies, analyze data, and publish results, interpretations, and conclusions of its work. Occasionally, Center staff will be expected to comment on research plans, provide critical commentary on research products, perform statistical policy analyses, and participate in other quick-response activities to support ASPE's research, evaluation, and policy analysis functions. (Without compromising academic freedom, Center staff will be expected to comply with special requests when the Administration requires confidentiality.) HHS will not interfere with nor infringe upon the academic freedom associated with the university setting.

To assure the quality of its research, dissemination, and mentoring program, and to assure a careful examination of the output of the Center within the academic community, the Center must establish and maintain a formal tie with a university, including links with all appropriate departments within that university. The Center must have a major presence at a single site (university or city); however, innovative arrangements among universities and with individual scholars at other universities also may be proposed. Particularly encouraged are arrangements with universities and researchers based in areas of high concentrations of poverty.

The program should focus on tracking and analyzing changes in state and national policies and their influences on individual, child, and family outcomes. Specifically, ASPE has identified five priority areas the applicant should address, at a minimum: (1) Strategies to encourage work, self-reliance, parental responsibility, community strengthening, and child well-being, (2) the changing labor market and its influence on low-income families with children, (3) nonmarital child-bearing, teen pregnancy, and healthy marriage, (4) health disparities across sub-populations, and (5) state and regional level policy, programs and interventions, particularly those targeted to geographic concentrations of the poor, to enhance self-sufficiency and well-being.

While these are ASPE priorities, applications also may address other important aspects of poverty, for example: the implications of health and disability status for poverty policy; concerns for the well-being of individual adults in poverty, and the interaction between income security programs, like welfare and tax credits, and service programs such as child care, child development, child welfare services, and education.

The overall program will develop and disseminate knowledge about these and related issues. Activities will include tracking, evaluating, and analyzing state and local government initiatives to reduce poverty, encourage economic mobility, and alleviate the ill effects of low income and family dysfunction. Activities also should examine alternative public and private approaches.

The awardee will perform the following specific tasks:

1. Research Program

The Center will be expected to plan, initiate and maintain a research program of high caliber. It must meet the tests of social science rigor and objectivity. The program will strive for respect from the academic and policy communities (over a broad range of the political spectrum) for its scientific quality, fairness, and policy relevance. This program should include an appropriately balanced agenda of basic and applied, quantitative and qualitative field work, and primary and secondary analyses. The research program should include supporting the work of members of the Center staff and other affiliated researchers. In addition, it should provide intellectual leadership in the national research community by establishing links with a broad range of other scholars, through visiting and postdoctoral appointments, research assistanceships, and an extramural program of nonresident grants. While graduates of the poverty center institutions can be found in many colleges and universities around the country and many maintain an affiliation with their Center, effort needs to be made to recruit and support outside poverty researchers from institutions that do not have the capacity to maintain a program of poverty research. It is important that applicants demonstrate clear plans to reach out to researchers at universities that traditionally have not had the capacity to foster a program of poverty research and the training of poverty researchers. In addition, awardees must commit to working cooperatively with the area centers funded under this announcement.

The research program should include multi-disciplinary and multi-method approaches to increasing the understanding of the issues beyond what is possible from analysis within the framework of a single discipline or

method. At a minimum, the proposed staff should possess competency in quantitative and qualitative methodologies, economics, sociology, public policy/administration, and other related disciplines. Furthermore, it also is appropriate, for example, to engage in activities to make advances in research techniques, where they are needed for or related to primary objectives of the Center. Planning and execution of the research program shall always consider the policy implications of research findings in a non-partisan manner. The Center should link research to public and private efforts to improve the lives of low-income individuals and families. The research and its dissemination will be of value to all levels of policy making—federal, state, and local government—as well as the general research community. A national advisory committee (discussed below) should periodically review the research agenda to assure its policy relevance, utility, and scope.

2. Mentoring Emerging Scholars

The Center is expected to develop and expand a diverse corps of emerging scholars/researchers who focus their analytical skills on research and policy issues central to its mission. The Center will be expected to financially support the work of graduate research assistants, PhD candidates, postdoctoral scholars, and other research scholars, and to make efforts to reach out to those emerging scholars affiliated with institutions that traditionally have not had the capacity to mentor students as poverty researchers.

3. Dissemination

Making knowledge and information available to the academic and policy communities is to be another integral feature of the Center's responsibilities. The awardee will maintain a dissemination system of periodic newsletters, research papers, and occasional books intended both for the research and policy communities. In addition, the awardee will be expected to organize workshops, lectures, seminars, and other ways of sharing current research activities and findings. Applicants are encouraged to propose use of innovative methods of disseminating data and information. Applications should show a sensitivity to the different dissemination strategies which may be appropriate for different audiences—such as policy makers, practitioners, and academics.

B. Awardee Responsibilities for Area Poverty Research Centers

The purpose of the Area Poverty Research Centers is to support interdisciplinary research leading to an understanding and reduction of poverty, income inequality and its correlates. Applicants are invited to propose multi-level, integrated research projects that will shed light on the complex interactions of the social and physical environment, and mediating behavioral factors which determine poverty and income inequality. Area Centers are expected to create an environment conducive to interdisciplinary collaborations among social and behavioral scientists and affected communities with the goal of improving well-being of individuals, families and children. The successful applicant(s) should develop and conduct a program which appropriately balances core infrastructure, research, the mentoring of emerging scholars, and dissemination activities directed to understanding the well-being of individuals, families and children. Although not required, applicants are encouraged to take advantage of defined geographic areas of study and existing data.

ASPE has identified five priority areas the applicant may address: (1) Strategies to encourage work, self-reliance, parent responsibility, community strengthening, and child well-being, (2) the changing labor market and its influence on low-income families with children, (3) nonmarital child-bearing, teen pregnancy, and healthy marriage, (4) income inequality and health disparities across sub-populations, and (5) state- and local-level policy, programs and interventions, particularly those targeted to geographic concentrations of poverty, to enhance self-sufficiency and wellbeing. Applications also may address other important aspects of poverty such as the implications of health and disability status for poverty policy; concerns for the well-being of individual adults in poverty, and the interaction between income security programs, like welfare and tax credits, and service programs such as child care, child development, child welfare services, and education. Additional areas of interest to ASPE that applicants may want to consider include: Women and children, welfare and work; poverty and mental health; and resiliency. In addition to these priority areas identified for the national and area centers, applicants for area center awards may wish to focus more specifically on issues germane to their local environment and while these are ASPE priorities, applications also may address other important aspects of poverty. ASPE strongly encourages studies in state and regional areas of concentrated poverty.

The awardees will perform the following tasks:

1. Research Program

The Area Poverty Research Centers will be expected to plan, initiate and maintain a research program of high caliber. It may include small-scale, new or ongoing social, behavioral, and/or policy-related research projects, including pilot research projects and feasibility studies; development, testing, and refinement of research techniques; secondary analysis of available data sets; and similar research projects that demonstrate research capability. Each Center will be expected to carry out at least two projects, as well as develop or expand the Center's presence on campus and in the broader research community.

2. Mentoring Emerging Scholars

The Area Poverty Research Centers are expected to develop and expand a diverse corps of emerging scholars/researchers who focus career goals on policy, research and programs focused on poverty populations. The Area Poverty Research Centers will be expected to develop an awareness and interest in students of the opportunities in poverty policy and research through such activities as research internships, seminars and related experiences. Applicants should demonstrate how students will benefit from exposure to and participation in the ongoing research of Area Poverty Research Center faculty and staff and be encouraged to pursue graduate studies and careers in the social and behavioral sciences with a focus on poverty-related studies.

3. Dissemination

Making knowledge and information available to the academic and policy communities is to be another integral feature of the Area Poverty Research Center's responsibilities. It will be expected to develop and maintain a dissemination system. Applicants are encouraged to propose use of innovative methods of disseminating data and information. Applications should show a sensitivity to the different dissemination strategies which may be appropriate for different audiences—such as policy makers, practitioners, and academics.

C. ASPE Responsibilities

ASPE will be involved with each Center in jointly establishing broad

research priorities and planning strategies to accomplish the objectives of this announcement. ASPE, or its representatives, will provide the following types of support to the Center: (1) Consultation and technical assistance in planning, operating, and evaluating the Center's program of research, mentoring and dissemination activities, (2) information about HHS programs, policies, and research priorities, (3) assistance in collaborating with appropriate federal, state and local governmental officials in the performance of program activities, (4) assistance in identifying HHS information and technical assistance resources pertinent to the Center's success, (5) assistance in the transfer of information to appropriate federal, state, and local entities, (6) review of Center activities and feedback to ensure that objectives and award conditions are being met, (7) ASPE will coordinate activities amongst the centers to ensure, to the extend possible, the optimal use of resources and expertise. APSE retains the right, however, to withhold annual renewals to the awardee, if technical performance requirements are not met.

D. Joint Responsibilities

Each awardee, jointly with ASPE, will appoint an outside advisory committee, funded under this agreement. Each committee will be selected to provide assistance to both the national center and each area center in formulating the research agenda and advice on carrying it out. Efforts will be made in selecting this committee to assure a broad range of academic disciplines and political viewpoints. For the national center the committee will be composed of approximately six to ten nationally recognized scholars and practitioners. (For a list of the current Advisory Committee members for the two Poverty Centers see their respective websites: *http://www.jcpr.org <http://www.jcpr.org>* and *http://www.ssc.wisc.edu/irp <http://www.ssc.wisc.edu>*.) This committee will meet once or twice a year rotating between Washington, DC and the Center location. For each area center, the committee will be made up of three to four scholars and practitioners and will include the director of the national center. It is expected that the area center's advisory committee will meet once a year.

E. Arbitration Procedures

Both parties are expected to work in a collegial fashion to minimize misunderstandings and disagreements. They should explore every alternative to prevent impasses, including consultation with the advisory committee established under section D., but agreement between the awardee and ASPE staff cannot be reached on significant programmatic or scientific-technical issues that might arise after the award, an arbitration panel should be formed. The panel will consist of one person appointed by the awardee, one person appointed by ASPE, and a third person appointed by these two members. The decision of the arbitration panel, by majority vote will be binding. These special arbitration procedures in no way affect the awardee's right to appeal an adverse action in accordance with HHS regulations at 45 CFR part 16.

F. Rights to Data

The awardee will retain custody of and have primary rights to the data developed under this award, subject to government rights to access consistent with current HHS and ASPE regulations. The awardee should make reasonable efforts, however, to provide other researchers appropriate and speedy access to research data from this project and establish public use files of research data developed under this award.

Part III. The Review Process

A. Intergovernmental Review

State Single Point of Contact (Executive Order 12372). The Department of Health and Human Services has determined that this program is not subject to Executive Order No. 12372, Intergovernmental Review of Federal Programs, because it is a program that is national in scope and the only impact on State and local governments would be through subgrants. Applicants are not required to seek intergovernmental review of their applications within the constraints of Executive Order 12372.

B. Initial 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, (2) the applicant is eligible for funding (see Part I, Section B), and (3) is within the page limit (see Part IV, Section A). Note that applications exceeding the page limit will not be reviewed further and will be ineligible for funding.

C. Competitive Review and Evaluation Criteria

Applications for the National Center that pass the initial screening will be evaluated and rated by a panel of at least three independent experts on the basis of specific evaluation criteria, which are detailed below. Applications for the Area Centers that pass the initial screening will be evaluated and rated by a federal review panel. The panel will use the evaluation criteria listed below to score each application. The evaluation criteria were designed to assess the quality of the 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 that are responsive to the evaluation criteria within the context of this program announcement. These review results will be the primary element used by the ASPE in making funding decisions. HHS reserves the option to discuss applications with other federal or state staff, specialists, experts, and the general public. Comments from these sources, along with those of the reviewers, will be kept from inappropriate disclosure and may be considered in making an award decision.

Selection of the successful applicant(s) will be based on the technical and financial criteria laid out in this announcement. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments and assign numerical scores—out of a possible 100 points. The review panel will prepare a summary of all applicant scores and strengths/weaknesses and recommendations and submit it to the ASPE for final decisions on the award. The point value following each criterion heading indicates the maximum numerical relative weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the applications.

Applications will be reviewed using the following evaluation criteria. Note that there are separate criteria for the National Center and the Area Centers. Please be sure to refer to Part IV, section B, application development.

Evaluation Criteria for the National Center

(1) Quality of the Staffing Proposal and Proposed Organizational Arrangements (30 points)

Reviewers will judge applicant's director/principal investigator and staff on research experience, demonstrated research skills, administrative skills,

public administration experience, and relevant technical expertise. Raters may consider references on prior research projects. Director and staff time commitments to the Center also will be a factor in the evaluation. Whether the applicant can maintain a single location for research, teaching, and scholarship is an important consideration. Furthermore, reviewers will rate the applicant's pledge and ability to work in collaboration with other scholars in search of similar goals, especially the area centers. Applicants will be judged on the nature and extent of the organizational support for research, mentoring scholars, and dissemination in topical areas related to the Center's central priorities. Applicants will be judged on their plans to reach out to researchers at universities that traditionally have not had the capacity to foster a program of poverty research and the training of poverty researchers. In addition, awardees must commit to working cooperatively with the area centers funded under this announcement. Reviewers will evaluate the commitment of the university (and proposed institutional unit that will contain the Center) to assess its ability to support all three major Center activities: (1) Scholarly, policy relevant research including plans for an extramural research program; (2) the mentoring and development of emerging scholars interested in poverty, families, children, and public policy; and (3) dissemination of research and other information to a broad and disparate set of academic, research, and policy communities. Reviewers also will evaluate the applicant's demonstrated capacity to work with a range of government agencies.

(2) Quality of the Research Agenda (30 points)

Reviewers will judge this section on the basis of whether the research agenda is scientifically sound and policy relevant. They also will consider whether the applicant is likely to make significant contributions to understanding poverty, families, child outcomes, and what governments can do to make the lives of adults, children and families more secure, healthier, and open to opportunity, and whether the approach extends beyond and builds upon the past 35 years of poverty research. The discussion and research proposed must address the major themes of this announcement (Strategies to encourage work, self-reliance, parental responsibility, community, and child well-being; the changing labor market and its influence on low-income families with children; nonmarital child-bearing, teen pregnancy, and healthy marriage; health disparities; and state and regional level policy, programs and interventions, particularly those targeted to geographic concentrations of the poor, to enhance self-sufficiency and well-being). Concise plans for research projects in the near term (one or two years) as well as a five-year agenda are important. Reviewers will rate applications on their plans to conduct policy-relevant research and interact with various levels of government to research and evaluate significant government initiatives and policies in a nonpartisan manner. In addition, applicants also will be judged on their dissemination plans—including convening conferences and workshops and communicating with a broad audience of academics, policymakers, and practitioners. Applicants will also be judged on the extent to which the proposed application addresses issues related to the concentration of poverty.

(3) Training and Mentoring Emerging Scholars (20 points)

The applicant evaluation will consider proposed efforts to develop and expand a diverse corps of emerging scholars and researchers. The ratings will consider the proposed mentoring and support given to graduate research assistants, PhD candidates, postdoctoral students, and other research scholars. The evaluation will include an assessment of plans to integrate the training of research scholars and expose them to policy research activities at ASPE. Reviewers will consider efforts to reach emerging scholars at institutions that have not had the capacity to mentor students as poverty researchers.

(4) Appropriateness of the Budget To Carry out the Planned Staffing and Activities (20 points)

Ratings will consider whether: (a) The budget assures an efficient and effective allocation of funds to achieve the objectives of this solicitation, (b) the applicant has additional funding from other sources, including the host institution. When additional funding is contemplated, applicants should note whether the funding is being donated by the institution, is in-hand from another funding source, or will be applied for from another funding source. Information concerning how the applicant will meet the matching requirement will be evaluated. The budget should include travel for advisory board members.

Evaluation Criteria for the Area Centers

(1) Approach (35 points)

Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the applicant present an adequate proposal to interest students in graduate studies or careers in poverty-related work, especially in geographic areas of concentrated poverty? Does the application make clear the procedures for the protection of human subjects?

(2) Significance (20 points)

Does this study(ies) address an important problem? If the aims of the application are achieved, how will knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field? Will projects focus on areas of state or regional concentrations of poverty?

(3) Qualifications of Principal Investigator and Mentoring (20 points)

Is the principal investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)? Do the investigators have direct contact with students? The reviewers will consider proposed efforts to expose and engage students in poverty related research and encourage the pursuit of advanced studies and/or careers in public policy and programs which address the needs of the poverty population.

(4) Environment (15 points)

Does the proposed Area Center build upon an existing institutional infrastructure? Do the proposed studies take advantage of features of the community or employ useful collaborative arrangements? Is there evidence of institutional support? Does the Area Center have any outside funding?

(5) Adequacy and Appropriateness of Overall Budget and the Allocation of Resources Across Administrative, Research and Other Areas (10 points)

Ratings will reflect whether: (a) The budget assures an efficient and effective allocation of funds to achieve the objectives of this solicitation, (b) the applicant has additional funding from other sources, including the host institution. When additional funding is contemplated, applicants should note

whether the funding is being donated by the institution, is in-hand from another funding source, or will be applied for from another funding source. Information concerning how the applicant will meet the matching requirement will be evaluated. The budget should include travel for advisory board members.

Part IV—The Application

A. General Information

This part contains information on the preparation of an application for submission under this announcement, the forms necessary for submission. Potential applicants should read this part carefully in conjunction with the information provided in Part II. In general, ASPE seeks organizations who can demonstrate the ability to provide quality policy research, training of emerging scholars, and working with federal, state and local governments. Applicants for funding should reflect, in the program narrative section of the application, how they will be able to fulfill the responsibilities and requirements described in the announcement. Applications for the National Center should specify in detail how administrative arrangements will be made to minimize start-up and transition delays. Applications which do not address all three major tasks discussed in Awardee Responsibilities in Part II (research program, mentoring emerging scholars, dissemination) will not be considered for award. The applicant must have experience working with governmental agencies—federal, state, or local. It is expected that the applicant will have additional funding and arrangements with other organizations and institutions, including the host institution(s). The applicant should make all current and anticipated related funding arrangements explicit in the application.

In order to be considered for an award under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ASPE. Application materials including forms and instructions are attached to this announcement. Additional copies are available from Michael J. Loewe or may be obtained electronically from the ASPE world wide web site at *http://www.ASPE.hhs.gov/programs/oa/form.htm.* Each application package must include an *original and two copies* of the complete application. All pages of the narrative must be sequentially numbered and unbound.

Applications must be received in the following format:

1. 12 point font size
2. Double line spacing
3. 1 inch top, bottom, left, and right margins
4. Page limit of 100 pages for the National Center (excluding appendices); 50 pages for the Area Centers (excluding appendices)
5. Applications that are not received in the format described above and/or exceed the page limit, will not be reviewed. Applicants are requested to be concise. Applicants are encouraged *not* to attach or include bound reports or other documents.

B. Application Development—National Center

Content and Organization of Technical Application (see ''Components of a Complete Application''). The application must begin with the required application forms and a three to five page overview and summary of the application. Staff resumes should be included in a separate appendix.

The national poverty center will provide a leadership role in furthering our understanding of the causes and consequences of poverty and the policy and program interventions to ameliorate poverty and its impacts on individuals, families and children. The national center will provide the organizational infrastructure to provide leadership in shaping a national agenda for poverty-related research and provide the necessary supports for basic and applied research, reaching out and supporting the broader research community, mentoring emerging scholars, dissemination of findings and securing additional financial support. The applicant should provide a five-year strategic plan for accomplishing this agenda. The plan should build upon and move forward from the accumulated knowledge of the past 35 years of poverty related research and past and future social, demographic, economic and policy trends. The plan should set out a concrete plan for addressing ASPE's priorities as well as additional areas of exploration that the applicant may propose.

The central core of the application is the strategic plan, and it must contain four sections, presented in the following order:

(1) Research Agenda

A prospectus for a five-year research agenda, outlining the major research themes to be investigated over the next five years, including the five listed in this announcement. In particular, the prospectus will describe the activities planned for each of the research priority issues outlined in Part II, Awardee Responsibilities and other additional priority research topics proposed by the applicant. The prospectus should discuss the kind of research activities that are needed to anticipate future policy debates on important social issues—poverty and child well-being, in particular—and the role of the proposed Research Center in carrying out those activities. The prospectus should clearly build upon the foundation of the past 35 years of poverty research and anticipated trends and policy developments. It may, of course, also discuss research areas and issues that were not mentioned in that analysis if the author or authors of the application feel there have been gaps in past research, or that new factors have begun to affect or soon will begin to affect national social policy. The prospectus should include descriptions of individual research projects that will be expected in the Center's first year of operation. It also should be specific about long-term research themes and projects. The lines of research described in the prospectus should be concrete enough that project descriptions in subsequent research plan amendments can be viewed as articulating a research theme discussed in the prospectus. An application that simply contains an ad hoc categorization of an unstructured set of research projects—as opposed to a set of projects which strike a coherent theme—will be judged unfavorably. Note: Once a successful applicant has been selected and the national Advisory Committee appointed, they and ASPE will review the research agenda and determine research priorities. The Center will submit to ASPE a revised research plan that summarizes the deliberations and priorities. The research plan will be periodically reviewed and revised as necessary. The application should discuss a proposed research planning process, including involvement of the national advisory committee and other advisors.

(2) Staff and Organizational Data

This application should include a staffing and organizational proposal for the Research Center, including an analysis of the types of background needed among staff members, the Center's organizational structure, and linkages with the host university and other organizations. It is in this second section that the application should specify how it will assure a genuinely interdisciplinary approach to research, and where appropriate, the necessary links to university departments, other organizations and scholars engaged in research, and government policy

makers. The applicant should identify the director (or principal investigator) and key senior research staff. Full resumes of proposed staff members should be included as a separate appendix to the application. In addition, the author(s) of the application and the role which he or she (they) will play in the proposed Poverty Research Center must be specified. The time commitment to the Center and other commitments for each proposed staff member should be indicated. The kinds of administrative and tenure arrangements, if any, the applicant proposes to make should also be discussed in this section. The applicant should discuss the financial arrangements for supporting affiliates, resident scholars, etc. If the application envisions an arrangement of several universities or institutions, this section will describe the specifics about the relationships, including leadership, management, and administration. It should pay particular attention to discussing how a focal point for research, teaching, and scholarship will be maintained given the arrangement proposed. Briefly discuss the role, selection procedure, and expected contribution of the national advisory committee. The applicant should describe plans for outreach to the Area Centers in addition to discussing efforts to assure a smooth transition between the current National Poverty Centers and this project.

(3) Training and Mentoring Emerging Scholars

A training and mentoring proposal describing how students will benefit from exposure to and participation in the ongoing research of the area center faculty and staff and how students will be encouraged to pursue graduate studies in the social and behavioral sciences with a focus on poverty related studies. The applicant should discuss the financial arrangements for supporting research assistants, post-doctoral students, etc. The applicant should present any past experience and future plans for engaging emerging scholars from institutions that have not traditional had the capacity to mentor poverty scholars. The discussion should include the expected number and types of emerging scholars to be supported and the level of support anticipated.

(4) Budget Narrative

A budget summary narrative which links the core infrastructure, research, mentoring, outreach, and dissemination program to the Center funding level. This section should discuss how the five-year budget supports proposed research, training, and dissemination activities and should link the first year funding to a five-year plan. The discussion should include the appropriateness of the level and distribution of funds to the successful completion of the research, training, and dissemination plans. Given the limited amount of funds available for this award, applicants are encouraged to use these funds as partial, core support for the proposed Center and to seek additional support from other sources. The availability, potential availability or hope for other funds (from the host university, other universities, foundations, states, other federal agencies, etc.) and the uses to which they would be put, should be documented in this section. Applications which show funding from other sources that supplement funds from this grant will be given higher scores than if they have no extra financial support or a plan for securing such support.

C. Application Development—Area Poverty Centers

Content and Organization of Technical Application (see ''Components of a Complete Application''). The application must begin with the required application forms and a three to five page overview and summary of the application. Staff resumes should be included in a separate appendix. The central core of the application must contain four sections, presented in the following order:

(1) Key Trends and Past Research Analysis

A brief analysis of the key trends (e.g., social, demographic, economic) and past research related to the area center's proposed focus which provides a basis for the proposed Area Center research agenda. It should examine the nature, causes, and correlates of one or two of the trends as they relate to the Area center's focus, as appropriate. The analysis should demonstrate the applicant's grasp of the policy and research significance of recent and future social trends as well as the past research.

(2) Research Agenda

A prospectus for a three-year research agenda, outlining the major research themes to be investigated over the next three years, including the five listed in this announcement. In particular, the prospectus will describe the activities planned for each of the research priority issues proposed by the Area Center; those either drawn from the listing of priority areas or proposed by the applicant. The prospectus should discuss the kind of research activities that will inform public policy in the priority issues selected and the role of the proposed Area Research Center in carrying out those activities. The prospectus should follow from the key trends and research analysis section. The prospectus should include detailed descriptions of the individual research projects that will be expected to be initiated in the Center's first year of operation; including the conceptual framework, design, data, methods and proposed analyses. It also should be specific about the longer-term research themes and projects. The lines of research described in the prospectus should be concrete enough that project descriptions in subsequent research plan amendments can be viewed as articulating a research theme discussed in the prospectus. An application that simply contains an *ad hoc* categorization of an unstructured set of research projects—as opposed to a set of projects which strike a coherent theme—will be judged unfavorably.

Note: Once a successful applicant has been selected ASPE will review the longer term research agenda with the Area Center and jointly determine future research priorities. The research plan will be periodically reviewed and revised as necessary. The application should briefly discuss a proposed research planning process, including involvement of an outside advisory committee and other advisors, and participation with other National and Area centers awarded as part of this grant program.

(3) Staff and Organizational Data

This application should include a staffing and organizational proposal for the Area Center, including an analysis of the types of background needed among staff members, the Area Center's organizational structure, and linkages with the host university and other organizations. It is in this third section that the application should specify how it will assure a genuinely interdisciplinary approach to research, and where appropriate, the necessary links to university departments, other organizations and scholars engaged in research, and government policy making. The applicant should identify the director (or principal investigator) and key senior research staff. Full resumes of proposed staff members should be included as a separate appendix to the application. The time commitment to the Area Center and other commitments for each proposed staff member should be indicated.

If the application envisions an arrangement of several universities or

institutions, this section will describe the specifics about the relationships, including leadership, management, and administration. It should pay particular attention to discussing how a focal point for research, teaching, and scholarship will be maintained given the arrangement proposed. The application also should briefly discuss the role, selection procedure, and expected contribution of an outside advisory committee.

(4) Training and Mentoring Emerging Scholars

A training and mentoring proposal describing how students will benefit from exposure to and participation in the ongoing research of the Area Center faculty and staff and how students will be encouraged to pursue graduate studies in the social and behavioral sciences with a focus on poverty related studies. This section should discuss the financial arrangements for supporting students and research assistants, if any. The discussion should include the expected number and types of emerging scholars to be supported and the level of support anticipated.

(5) Budget Narrative

A budget summary narrative which links the core infrastructure, research, training, and dissemination program to the Center funding level. This section should discuss how the three-year budget supports proposed research, training, and dissemination activities and should link the first year funding to a three-year plan. The discussion should include the appropriateness of the level and distribution of funds to the successful completion of the research, training, and dissemination plans. Given the limited amount of funds available for this award, applicants are encouraged to use these funds as partial, core support for the proposed Center and applicant having or seeking additional support from other sources. The availability, potential availability or hope for other funds (from the host university, other universities, foundations, states, other Federal agencies, *etc.*) and the uses to which they would be put, should be documented in this section. We encourage applications to pursue or plan to pursue supplemental funding.

D. Application Submission

1. Mailed applications postmarked after the closing date will be classified as late.

2. *Deadline*. The closing (deadline) date for submission of applications is [insert 60 days Mailed applications should be considered as meeting the announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ASPE in time for the independent review to: Michael J. Loewe, Deputy Grants Management Officer, Grants Management Branch, National Institute of Child Health and Human Development, U.S. Department of Health and Human Services, 6100 Executive Boulevard, Room 8A01, Bethesda Maryland 20892–7510 (Regular Mail), Rockville Maryland 20852 (Express Mail), Phone: (301) 435–6995 Fax: (301) 402–0915.

Applicants must ensure that a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application. 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 should 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 should be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m. EST, at the U.S. Department of Health and Human Services, Grants Management Branch National Institute of Child Health and Human Development, U.S. Department of Health and Human Services, 6100 Executive Boulevard, Room 8A01 Bethesda Maryland 20892–7510 (Regular Mail), Rockville Maryland 20852 (Express Mail)) The address must appear on the envelope/package containing the application with the note ''Attention: (Michael J. Loewe, Deputy Grants Management Officer '' (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications transmitted by fax or through other electronic means will not be accepted regardless of date or time of submission or receipt.

3. *Late applications.* Applications that do not meet the criteria above are considered late applications. NICHD should notify each late applicant that its application will not be considered in the current competition.

4. *Extension of deadlines.* NICHD may extend an application deadline when circumstances such as acts of God (floods, hurricanes, *etc.*) occur, or when there are widespread disruptions of the mail service, or in other rare cases. Determinations to extend or waive deadline requirements rest with Michael J. Loewe , Deputy Grants Management Officer, Grants Management Branch, National Institute of Child Health and Human Development.

C. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary for Planning and Evaluation will notify the applicants of the disposition of their applications. If approved, a signed notification of the award will be sent to the business office named in the ASPE checklist.

3. *The Assistant Secretary's Discretion.* Nothing in this announcement should be construed as to obligate the Assistant Secretary for Planning and Evaluation to make any awards whatsoever. Awards and the distribution of awards among the priority areas are contingent on the needs of the Department at any point in time and the quality of the applications that are received.

D. The Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.239.

E. Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424);

2. Budget Information—Non-construction Programs (Standard Form 424A);

3. Assurances—Non-construction Programs (Standard From 424B);

4. Table of Contents;

5. Budget Justification for Section B Budget Categories;

6. Proof of Non-profit Status, if appropriate;

7. Copy of the applicant's Approved Indirect Cost Rate Agreement, if necessary;

8. Project Narrative Statement, organized in five sections, addressing the following topics (See Part IV, Section B):

(a) Key Trend Analysis

(b) Research Agenda Prospectus

(c) Staff and Organizational Data

(d) Summary of Past Work
(e) Budget Appropriateness
9. Any appendices or attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension, or other Responsibility Matters;
12. Certification and, if necessary, Disclosure Regarding Lobbying;
13. Supplement to Section II—Key Personnel;
14. Application for Federal Assistance Checklist.

Dated: June 10, 2002.

William Raub,

Principal Deputy for Secretary for Planning and Evaluation.

[FR Doc. 02–15232 Filed 6–17–02; 8:45 am]

BILLING CODE 4110–60–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Acting Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding a ''Patient Safety Program Evaluation Center''. The RFP was published in the FedBizOpps on April 5, 2002.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., appendix 2 and procurement regulations, 41 CFR 101–6.1023 and 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: The Agency for Healthcare Research and Quality—''Patient Safety Program Evaluation Center''.

Date: July 8, 2002.

Place: Agency for Healthcare Research & Quality, 6010 Executive Blvd, 4th Floor Conference Center, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact James Battles, Center for Quality Improvement and Patient Safety, Agency for Healthcare Research and Quality, 6011 Executive Blvd, Suite 200, Rockville, Maryland, 20852, 301–594–9892.

Dated: June 11, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–15219 Filed 6–17–02; 8:45 am]

BILLING CODE 4160–AD–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain device panels of the Medical Devices Advisory Committee (MDAC), the National Mammography Quality Assurance Advisory Committee (NMQAAC), the Device Good Manufacturing Practice Advisory Committee (DGMPAC), and the Technical Electronic Products Radiation Safety Standards Committee (TEPRSSC) in the Center for Devices and Radiological Health (CDRH). Nominations will be accepted for current vacancies and those that will or may occur through August 31, 2003.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: *See* table 1, in section IV.B of **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kathleen L. Walker, Center for Devices and Radiological Health (HFZ–17), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1283, ext. 114, e-mail: *KLW@CDRH.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Vacancies

FDA is requesting nominations of voting members for vacancies listed as follows:

1. *Anesthesiology and Respiratory Therapy Devices Panel*: Two vacancies immediately, two vacancies occurring November 30, 2002; anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilatory support, pharmacology, physiology, or the effects and complications of anesthesia.

2. *Circulatory System Devices Panel*: Two vacancies immediately, two vacancies occurring June 30, 2003; interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.

3. *Dental Products Panel*: Two vacancies occurring October 31, 2002; dentists who have expertise in the areas of lasers, temporomandibular joint implants and/or endodontics; or experts in tissue engineering and/or bone physiology relative to the oral and maxillofacial area.

4. *Gastroenterology and Urology Devices Panel*: One vacancy occurring December 31, 2002; urologists and gastroenterologists.

5. *General and Plastic Surgery Devices Panel*: Four vacancies occurring August 31, 2002, and one vacancy occurring August 31, 2003; general surgeons, plastic surgeons, thoracic surgeons, abdominal surgeons, pelvic surgeons and reconstructive surgeons, biomaterials experts, laser experts, wound healing experts or endoscopic surgery experts.

6. *General Hospital and Personal Use Devices Panel*: Three vacancies immediately; internists, pediatricians, neonatologists, endocrinologists, gerontologists, nurses, biomedical engineers or microbiologists/infection control practitioners or experts.

7. *Hematology and Pathology Devices Panel*: Three vacancies occurring February 28, 2003; gynecologists, cytopathologists, histopathologists, hematologists (blood banking, coagulation and hemostasis), molecular biologists (nucleic acid amplification techniques), and hematopathologists (oncology).

8. *Immunology Devices Panel*: One vacancy occurring February 28, 2003; persons with experience in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy,

molecular diagnostics, or clinical laboratory medicine.

9. *Molecular and Clinical Genetics Devices Panel*: Three vacancies occurring May 31, 2003; experts in human genetics and in the clinical management of patients with genetic disorders, e.g., pediatricians, obstetricians, and neonatologists. The agency is also interested in considering candidates with training in inborn errors of metabolism, biochemical and/or molecular genetics, population genetics, epidemiology and related statistical training. Additionally, individuals with experience in genetic counseling, medical ethics as well as ancillary fields of study will be considered.

10. *Obstetrics and Gynecology Devices Panel*: Two vacancies occurring January 31, 2003; experts in perinatology, embryology, reproductive endocrinology, operative hysteroscopy, pelviscopy, electrosurgery, laser surgery, assisted reproductive technologies, contraception, post-operative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; expert in gynecology in the older patient; experts in diagnostic (optical) spectroscopy.

11. *Radiological Devices Panel*: One vacancy occurring January 31, 2003; statistician with biomedical expertise including the design of clinical trials, ROC (receiver operating characteristic) analysis, diagnostic test evaluation, and data testing.

12. *National Mammography Quality Assurance Advisory Committee*: One vacancy occurring January 31, 2003; physician, practitioner, or other health professional whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography.

13. *Device Good Manufacturing Practice Advisory Committee*: three vacancies occurring immediately; one government representative, one industry representative, and one general public representative; four vacancies occurring May 31, 2003; two government representatives, one industry representative, and one health professional.

14. *Technical Electronic Product Radiation Safety Standards Committee*: Five vacancies occurring December 31, 2002, one government representative, three industry representatives, and one general public representative.

II. Functions

A. Medical Devices Advisory Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. The panels engage in a number of activities to fulfill the functions the Federal Food, Drug, and Cosmetic Act (the act) envisions for device advisory panels. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, advises the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification or reclassification of devices into one of three regulatory categories; advises on any possible risks to health associated with the use of devices; advises on formulation of product development protocols; reviews premarket approval applications for medical devices; reviews guidelines and guidance documents; recommends exemption of certain devices from the application of portions of the act; advises on the necessity to ban a device; and responds to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and agency guidance and policies. The panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or agency decisions or actions.

B. National Mammography Quality Assurance Advisory Committee

The functions of the committee are to advise FDA on: (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities; (7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999; and (9) determining the costs and benefits of compliance with these requirements.

C. Device Good Manufacturing Practice Advisory Committee

The functions of the committee are to review proposed regulations for promulgation regarding good manufacturing practices governing the methods used in, and the facilities and controls used for manufacture, packaging, storage, installation, and servicing of devices, and make recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also reviews and makes recommendations on proposed guidelines developed to assist the medical device industry in meeting the good manufacturing practice requirements, and provides advice with regard to any petition submitted by a manufacturer for an exemption or variance from good manufacturing practice regulations.

Section 520 of the act (21 U.S.C. 360j), as amended, provides that the Device Good Manufacturing Practice Advisory Committee shall be composed of nine members as follows: (1) Three of the members shall be appointed from persons who are officers or employees of any Federal, State, or local government; (2) two shall be representatives of interests of the device manufacturing industry; (3) two shall be representatives of the interests of physicians and other health professionals; and (4) two shall be

representatives of the interests of the general public.

D. Technical Electronic Product Radiation Safety Standards Committee

The function of the committee is to provide advice and consultation on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products. The committee may recommend electronic product radiation safety standards for consideration.

Section 534(f) of the act (21 U.S.C. 360kk(f)), as amended by the Safe Medical Devices Act of 1990, provides that the Technical Electronic Product Radiation Safety Standards Committee include five members from governmental agencies, including State or Federal Governments, five members from the affected industries, and five members from the general public, of which at least one shall be a representative of organized labor.

III. Qualifications

A. Panels of the Medical Devices Advisory Committee

Persons nominated for membership on the panels shall have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the panel. The particular needs at this time for each panel are shown in section I of this document. The term of office is up to 4 years, depending on the appointment date.

B. National Mammography Quality Assurance Advisory Committee

Persons nominated for membership should be physicians, practitioners, and other health professionals, whose clinical practice, research specialization, or professional expertise include a significant focus on mammography and individuals identified with consumer interests. Prior experience on Federal public advisory committees in the same or similar subject areas will also be considered relevant professional expertise. The particular needs are shown in section I of this document. The term of office is up to 4 years, depending on the appointment date.

C. Device Good Manufacturing Practice Advisory Committee

Persons nominated for membership as a government representative or health professional should have knowledge of or expertise in any one or more of the following areas: Quality assurance concerning the design, manufacture, and use of medical devices. To be eligible for selection as a representative of the general public or industry, nominees should possess appropriate qualifications to understand and contribute to the committee's work. The particular needs are shown in section I of this document. The term of office is up to 4 years, depending on the appointment date.

D. Technical Electronic Product Radiation Safety Standards Committee

Persons nominated must be technically qualified by training and experience in one or more fields of science or engineering applicable to electronic product radiation safety. The particular needs are shown in section I of this document. The term of office is up to 4 years, depending on the appointment date.

IV. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory panels or advisory committees. Self-nominations are also accepted. Nominations shall include a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

A. Consumer/General Public Representatives

Any interested person may nominate one or more qualified persons as a member of a particular advisory committee or panel to represent consumer interests as identified in this notice. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Selection of members representing consumer interests is conducted through procedures that include use of a consortium of consumer organizations that has the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

Nominations shall include a complete curriculum vita of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or in any advisory committee. The term of office is up to 4 years, depending on the appointment date.

B. TABLE 1.—ADDRESSES FOR CURRICULUM VITAE AND NOMINATIONS

Advisory Committee	Type of Representative	Contact Person	Office/Center/ Mail Code	Addresses/ E-mail	Telephone
For device panels of the MDAC	All types	Nancy J. Pluhowski	Office of Device Evaluation (HFZ–400), CDRH	9200 Corporate Blvd., Rockville, MD 20850, or njp@cdrh.fda.gov	301–594–2022 ext. 133
NMQAAC	All, excluding consumer representatives	Charles A. Finder	CDRH (HFZ–240)	1350 Piccard Dr., Rockville, MD 20850, or caf@cdrh.fda.gov	301–827–0009

B. TABLE 1.—ADDRESSES FOR CURRICULUM VITAE AND NOMINATIONS—Continued

Advisory Committee	Type of Representative	Contact Person	Office/Center/ Mail Code	Addresses/ E-mail	Telephone
DGMPAC	Industry and government representatives	Sharon Kalokerinos	CDRH (HFZ–300)	2094 Gaither Rd., Rockville, MD 20850, or smk@cdrh.fda.gov	301–594–4613 ext. 139
TEPRSSC	Industry and government representatives	Orhan Suleiman	CDRH (HFZ–240)	1350 Piccard Dr., Rockville, MD 20850, or ohs@cdrh.fda.gov	301–594–3533
NMQAAC, DGMPAC, TEPRSSC	Consumer and general public representatives	Linda A. Sherman	Office of the Senior Associate Commissioner for Office of External Relations (HF–4)	5600 Fishers Lane, Rockville, MD 20857, or lsherman@oc.fda.gov	301–827–1220

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: June 10, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–15210 Filed 6–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Protection of Human Subjects in Clinical Trials; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

The Food and Drug Administration (FDA) is announcing the following meeting: Protection of Human Subjects in Clinical Trials. The topics to be discussed are the role of FDA, institutional review boards, and other stakeholders in the protection of human subjects in clinical trials as it relates to minority participation.

Date and Time: The meeting will be held on August 22, 2002, from 7:30 p.m. to 9 p.m.

Location: The meeting will be held at Meharry Medical School, West Basic Science Building Auditorium, rm. M001, 21st Avenue North at Meharry Blvd., Nashville, TN 37208.

Contact: Sandra S. Baxter, Southeast Region, New Orleans District Office, Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615–781–5385, ext. 122, FAX 615–781–5383, e-mail: sbaxter@ora.fda.gov.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), and written material and requests to make oral presentations, to the contact person by August 8, 2002.

If you need special accommodations due to a disability, please contact Sandra S. Baxter at least 7 days in advance.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: June 10, 2002.

John Marzilli,

Acting Senior Associate Commissioner for Regulatory Affairs.

[FR Doc. 02–15279 Filed 6–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–5199]

Medical Devices; Guidance for Resorbable Adhesion Barrier Devices for Use in Abdominal and/or Pelvic Surgery; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Guidance for Resorbable Adhesion Barrier Devices for Use in Abdominal and/or Pelvic Surgery.'' This guidance is intended to provide guidance on the preclinical testing recommended for resorbable adhesion barrier devices used in abdominal and/or pelvic surgery. This guidance is being issued to finalize the previous draft version issued on December 16, 1999.

DATES: Submit written or electronic comments concerning this guidance at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Guidance for Resorbable Adhesion Barrier Devices for Use in Abdominal and/or Pelvic Surgery'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. *See* the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Joyce M. Whang, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180

SUPPLEMENTARY INFORMATION:

I. Background

This guidance document is intended to provide guidance on the preclinical and clinical testing recommended for resorbable adhesion barrier devices used in abdominal and/or pelvic surgery. It was developed jointly by the Division of General, Restorative and Neurological Devices, and the Division of Reproductive, Abdominal and Radiological Devices. The final version of this guidance supersedes the draft

version published in the **Federal Register** on December 16, 1999 (64 FR 70264). The comment period for the draft guidance ended on March 15, 2000. A meeting of the Obstetrics and Gynecology Devices Panel was held on January 25, 2000, to discuss the draft version of this guidance.

Comments received on the draft guidance generally addressed the use of adhesion reduction as a surrogate endpoint for clinical endpoints such as fertility, pelvic pain, and small bowel obstruction. Several respondents stated that adhesion reduction itself should be considered an endpoint that provides a clinical benefit to the patient irrespective of other clinical outcomes such as those mentioned above. The agency believes that whether adhesion reduction is considered a surrogate or clinical endpoint, it is valid as a study endpoint so long as the adhesion reduction measured provides some reasonable assurance that the adhesion barrier will provide clinically significant results.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on resorbable adhesion barrier devices used in abdominal and/or pelvic surgery. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

In order to receive ''Guidance for Resorbable Adhesion Barrier Devices for Use in Abdominal and/or Pelvic Surgery'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1356) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

You may obtain a copy of the guidance from the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. You may access the CDRH home page at *http://www.fda.gov/cdrh*. You may search for all CDRH guidance documents at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Dockets Management Branch Web site at *http://www.fda.gov/ohrms/dockets*.

IV. Comments

You may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this guidance at any time. You should submit two copies of any comments. Individuals may submit one copy. You must identify comments with the docket number found in brackets in the heading of this document. The guidance 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.

Dated: May 31, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–15209 Filed 6–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Solicitation of Information and Recommendations for Revising the Compliance Program Guidance for the Hospital Industry

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice seeks the input and recommendations of interested parties as the OIG revises the compliance program guidance (CPG) for hospitals, especially those serving Medicare, Medicaid and other Federal health care program beneficiaries. The hospital industry has experienced a number of changes since the first CPG was published in early 1998. Additionally, the subsequent 4 years of compliance activity in the hospital industry has allowed the OIG to more fully address the various risk areas in hospital compliance.

With the implementation of the Hospital Outpatient Prospective Payment System (OPPS), as well as other significant changes in the hospital industry, the OIG is reevaluating the contents of the hospital CPG. As part of this process, the OIG is soliciting comments, recommendations and other suggestions from concerned parties and organizations on how best to revise the hospital CPG to address relevant compliance issues. Specifically, the OIG seeks comments addressing any changes to existing risk areas, and introduction of any new risk areas related to OPPS implementation or industry changes.

DATES: To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on August 19, 2002.

ADDRESSES: Please mail or deliver your written comments, recommendations and suggestions to the following address: Department of Health and Human Services, Office of Inspector General, Attention: OIG–12–CPG, Room 5527 A, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to the file code OIG–12–CPG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 independence Avenue, SW., Washington, DC 20201 on Monday through Friday of each week from 8:00 A.M. to 4:30 P.M.

FOR FURTHER INFORMATION CONTACT: Paul M. Johnson, Office of Counsel to the Inspector General, (202) 619–2078; or Joel Schaer, Office of Counsel to the Inspector General, (202) 619–0089.

SUPPLEMENTARY INFORMATION: The development of compliance program guidances has become a major initiative of the OIG in its effort to engage the private health care industry in addressing and combating fraud and abuse. Over the past several years, the OIG has developed and issued compliance program guidances directed at various segments of the health care industry. These guidances are designed to provide clear direction and assistance to specific sections of the health care industry that are interested in addressing compliance with Federal health care program requirements.

The guidances have represented the culmination of the OIG's suggestions on how providers can most effectively establish internal controls and implement monitoring procedures to identify, correct and prevent potentially fraudulent conduct. The suggestions contained in the guidances are not mandatory for providers, nor do they

represent an exclusive discussion of the advisable elements of a compliance program.

Through this **Federal Register** notice, the OIG is seeking input from interested parties as the OIG considers revising the CPG for the hospital industry. The OIG will consider all comments, recommendations and suggestions received within the time frame indicated above. The OIG would appreciate specific comments, recommendations and suggestions on (1) risk areas for the hospital industry, and (2) aspects of the seven elements contained in the previous CPGs that may need to be modified in light of recent developments in the hospital industry and changes in Federal health care program systems. Detailed justifications and empirical data supporting any suggestions would be appreciated.

We request that any comments, recommendations or suggestions be submitted in a format that address the topics outlined above in a concise manner, rather than in the form of a comprehensive draft guidance that mirrors previous CPGs.

Dated: May 29, 2002.

Janet Rehnquist,

Inspector General.

[FR Doc. 02–15349 Filed 6–17–02; 8:45 am]

BILLING CODE 4152–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, ''Growth Factor Receptor Signaling in Breast Cancer Progression''.

Date: July 10–12, 2002.

Time: 5:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Astrodome Convention Center, 8686 Kirby Drive, Houston, TX 77030.

Contact Person: Shakeel Ahmad, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 8th Floor, Room 8137, 6116 Executive Boulevard, Bethesda, MD 20892, (301) 594–0114, *amads@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15261 Filed 6–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Review of Tobacco Industry Documents.

Date: July 11, 2002.

Time: 2 pm to 8 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Hotel, 1901 University Blvd. SE, Albuquerque, NM 87106.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8101, Rockville, MD 20892–7405, 301/496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Deterction and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15266 Filed 6–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, National Cancer Institute.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and meet special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Cancer Institute.

Date: July 10, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: The purpose of the meeting will be to discuss the Kidney/Bladder Progress Review Group Report.

Place: National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 11A03, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lisa Stevens, PhD, Executive Secretary, National Institute of Health, Building 31, Room 3A30, Bethesda, MD 20892, 301/496–1458.

Information is also available on the Institute's/Center home page: *deainfo.nci.gov/advisory/joint/htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research, 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15267 Filed 6–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, AIDS/HIV.

Date: July 8, 2002.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6707 Democracy Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dale Birkle, PhD, Scientific Review Administrator, NIH/NCCAM, 6707 Democracy Blvd., Democracy Two Building, Suite 401, Bethesda, MD 20892, (301) 451–6570, *birkled@mail.nih.gov.*

Dated: June 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15262 Filed 6–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Minority Scientist Development Award.

Date: June 19, 2002.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John E Richters, PhD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971, *jrichters@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, NINR Predoctoral Fellowships.

Date: June 19, 2002.

Time: 3:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John E Richters, PhD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971, *jrichters@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: June 10, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15257 Filed 6–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Women's Interagency HIV Study (WIHS) III.

Date: July 25–26, 2002.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate cooperative agreement applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Ave., Washington, DC 20007.

Contact Person: Hagit David, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2117, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550, *hdavid@mercury.niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 11, 2002.

LeVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15258 Filed 6–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, MARC Review Subcommittee A.

Date: June 20, 2002.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard I. Martinez, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200, (301) 594–2849.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15260 Filed 6–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Interdisciplinary Behavioral Science Centers of Mental Health.

Date: July 16, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340, *haraj@mail.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15263 Filed 6–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Loan Repayment Program Review.

Date: June 27, 2002.

Time: 2 PM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Linda Robbins, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6109B, MSC 9607, Bethesda, MD 20892–9607, 301–443–5159, *lrobbins@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15264 Filed 6–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel ''Otitis Media, New Approaches''

Date: July 29, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: Ali A. Azadegan, DVM, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD, NIH, EPS–400C, 6120 Executive Blvd., MSC 7180, Bethesda, MD 20892–7180, (301) 496–8683, *azadegan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: June 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15265 Filed 6–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, SBIR Phase II: ''Primary Care Adolescent Drug and Alcohol Screening Instrument''.

Date: June 20, 2002.

Time: 9:30 AM to 11:30 AM.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, 301–435–1439.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, SBIR Phase II: ''Automated Social Network Data Collection''.

Date: June 27, 2002.

Time: 9:30 AM to 11:30 AM.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, 301–435–1439.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 11, 2002.

LeVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15269 Filed 6–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 24, 2002, 8:30 AM to June 25, 2002, 2:00 PM, River Inn, 924 25th Street, NW., Washington, DC, 20037 which was published in the **Federal Register** on June 6, 2002, 67 FR 39031–39033.

The meeting has been changed to July 8–9, 2002. The time and location remain the same. The meeting is closed to the public.

Dated: June 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15259 Filed 6–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncological Sciences Integrated Review Group, Clinical Oncology Study Section.

Date: July 7–9, 2002.

Time: 5:30 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.

Contact Person: Sharon K. Pulfer, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular and Renal Study Section.

Date: July 8–9, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 F01–20 Fellowship Meeting.

Date: July 8–9, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Sherry L. Stuesse, PHD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1785, *stuesses@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–M (02) Reparative Medicine.

Date: July 8–9, 2002.

Time: 8:30 AM to 10:30 AM.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington embassy Row, 2015 Massachusetts Avenue NW., Washington, DC 20036.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20893–7814, 301/435–1743, *sipej@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–L (10)–B Small Molecule Drug Delivery/Drug Discover SBIR/STTR Panel.

Date: July 8, 2002.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton—Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Contact Person: Janet Nelson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1723, *nelsonja@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 Cell Development and Function–1 (01).
Date: July 8, 2002.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael H. Sayre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SMB (04) Diabetic Nephropathy.
Date: July 8, 2002.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Paul D. Wagner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 435–6809, *wagnerp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ET–1 (01).
Date: July 8, 2002.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–4 (03) Neurosciences-Inflammatory Pain.
Date: July 8, 2002.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 F03B (20) Molecular, Cellular and Development Neuroscience-Fellowship B.
Date: July 9, 2002.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.
Contact Person: Anne E. Schaffner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7850, Bethesda, MD 20892, 301–435–1239, *schaffna@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–A (01).
Date: July 9, 2002.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, 301–435–1725.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SMB (03) Diabetic Nephropathy Trials.
Date: July 9, 2002.
Time: 10 AM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: Quality Hotel, Courthouse Plaza, 1200 North Courthouse Road, Arlington, VA 22201.
Contact Person: Paul D. Wagner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–435–6809, *wagnerp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 HEM–2 (01) CVA Member Conflict.
Date: July 9, 2002.
Time: 10 AM to 11:30 AM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301–435–1777.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–M (03) Reparative Medicine.
Date: July 9, 2002.
Time: 11 AM to 12 PM.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington, Embassy Row, 2015 Massachusetts Avenue NW., Washington, DC 20036.
Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–1743, 301/435–1743, *sipe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SNEM 5 Member Applications.
Date: July 9, 2002.
Time: 1 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, *schwarte@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–M (01) Reparative Medicine.
Date: July 9–10, 2002.
Time: 2 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington Embassy Row, 2015 Massachusetts Avenue NW., Washington, DC 20036.
Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814, 301/435–1743 *sipe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 Urology 01.
Date: July 9–10, 2002.
Time: 2 PM to 11 AM.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, 301/435–1198.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–7 (01).
Date: July 9, 2002.
Time: 2 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room. 5158, MSC 7844, Bethesda, MD 20892, 301/435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BBBP–3 (02) Psychopathology in Aging.
Date: July 9, 2002.
Time: 2 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for

overnight mail use room # and 20817 zip), Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PHRA (02) BRP Response.

Date: July 9, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4127, MSC 7804, Bethesda, MD 20892, 301–435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neurosciences-2 (02) Member's Conflicts Meeting.

Date: July 10, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reproductive Endocrinology (01).

Date: July 10, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott, Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042, *shaikha@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 F10 (20) Basic and Clinical Aspects of Respiratory, Cardiovascular, Digestive and Renal System.

Date: July 10–11, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Peter J. Perrin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–P (01) Molecular, Cellular and Development Neurosciences-Member Conflict.

Date: July 10, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: Carole L. Jelsema, PhD, Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 453–1248, *jelsemac@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 Urology 17B: Small Business: Urology.

Date: July 10, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MGN (03).

Date: July 10–11, 2002.

Time: 7:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045. *corsaroc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institute of Health, HHS)

Dated: June 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–15268 Filed 6–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–25

Notice of Submission of Proposed Information Collection to OMB Requirements for Single Family Mortgage Instrument

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 18, 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 (2502–04040) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@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 20410; 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 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 or 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 of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Requirements For Single Family Mortgage Instruments.

OMB Approval Number: 2502–0404.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: This information will be used to verify that a mortgage has been properly recorded

and is eligible for FHA mortgage insurance.

Respondents: Individuals or households, Business or other for-profit

Frequency of Submission: On occasion, Completed for each mortgage loan made by the lender.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	9,000	1,000,000		0.25		250,000

Total Estimated Burden Hours: 250,00.

Status: Extension of currently approve collection

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 12, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer

[FR Doc. 02–15246 Filed 6–17–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–0680–7123–AA–1220–24 1A]

Proposed New Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to approve a new information collection on medical incidents. This information allows BLM to gather only the necessary data on a patient and the mechanism of injury Emergency Medical Response and Law Enforcement personnel need, while eliminating unnecessary sections of the current medical forms in use.

DATES: You must submit your comments to BLM at the address below on or before August 19, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–NEW'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barry Nelson, Chief Ranger, Bureau of Land Management, 2601 Barstow Road, Barstow, California 92311 or call (760) 252–6070 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Chief Ranger Nelson.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a), requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the proposed collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) the accuracy of our estimates of the proposed information collection burden, including the validity of the methodology and assumptions we use;

(c) ways to enhance the quality, utility, and clarity of the information collected; and

(d) ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The BLM currently uses Medical Run Sheets provided by the Incident Command Emergency Medical Association (ICEMA). These run sheets were designed for use by Paramedics who:

(1) Are licensed to perform controlled medical acts under Standing Orders or Advanced Medical Directives based on the instructions of a delegating physician; and

(2) Must transport patients and administer any necessary treatment during transport.

BLM personnel operate only at the level of First Responders or Emergency Medical Technicians; the ICEMA run sheets provide areas that are not beneficial or useful to BLM. This results in sections of the run sheet being left blank and not utilized with information that BLM staff must include in incident reports or when gathering medical data.

The proposed new form will eliminate sections of the ICEMA run sheet that only paramedics and fire personnel use and replace the sections that will benefit both law enforcement and medical personnel, while still providing the information hospitals need. Since the BLM medical staff do not work ''medicals'' on a daily basis, the new run sheet will ensure that medical personnel and BLM Law Enforcement have the information they need. This will ensure that personnel follow proper procedures and document actions.

Based on BLM's experience administering the activities described above, we estimate we process 260 incident reports each year. We estimate the incident report completion time will vary from 5 to 30 minutes, with an average of 10 minutes. Most information for the incident report is gathered within the 10 minutes while other information (vitals) is completed periodically until higher level EMS personnel arrives. Annual responses will vary depending on the number of accidents. The estimated total annual burden is 130 hours.

Any member of the public may request and obtain, without charge, a copy of the BLM CA Form 9260–29 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Dated: March 22, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–15306 Filed 6–17–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1430–ET; CACA 8155]

Public Land Order No. 7525; Partial Opening of Federal Power Commission Order Dated September 26, 1951; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens, subject to the provisions of Section 24 of the Federal Power Act, 40 acres of National Forest System land withdrawn for Power Project No. 2088 by the Federal Power Commission Order dated September 26, 1951. This action will allow for disposal of the land by exchange and retain the power rights to the United States.

DATES: July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916–978–4675.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination by the Federal Energy Regulatory Commission in DVCA–1245–000, it is ordered as follows:

At 8:30 a.m. on July 18, 2002, the following described land, withdrawn by the Federal Power Commission Order dated September 26, 1951, for Power Project No. 2088, will be opened to disposal by land exchange, subject to the provisions of Section 24 of the Federal Power Act, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Mount Diablo Meridian

T. 21 N., R. 8 E.,
sec. 32, NE¼SW¼.

The area described contains 40 acres in Plumas County.

Dated: May 10, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–15312 Filed 6–17–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1430–EU; CACA–42659]

Notice of Realty Action, Noncompetitive Sale of Public Land in Siskiyou County, California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of segregation and sale of public land.

SUMMARY: The below described public land has been found suitable for direct sale under section 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value of $6,500.00. The land will not be offered for sale until at least 60 days after the date of this notice.

DATES: Submit comments on or before August 2, 2002.

FOR FURTHER INFORMATION CONTACT: Susie Rodriguez, Redding Field Office, 355 Hemsted Drive, Redding, CA, 96002; 530–224–2142.

SUPPLEMENTARY INFORMATION: The following public land has been found suitable for direct sale under section 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value of $6,500.00. The land will not be offered for sale until at least 60 days after the date of this notice.

Mount Diablo Meridian

T. 43 N., R.10 W.,
Section 11, Lot 12.

The land described contains 5.81 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Richard Dews, consistent with 43 CFR 2711.3–3(a)(1). It has been determined that the parcel contains no mineral values; therefore, mineral interests may be conveyed simultaneously. The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The patent, when issued, will contain certain reservations to the United States and will be subject to all existing rights. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Redding Field Office, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit written comments regarding the proposed sale to Charles M. Schultz, Field Office Manager, Redding Field Office, Bureau of Land Management, 355 Hemsted Dr., Redding, CA 96002. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: June 7, 2002.

Howard K. Stark,

Chief, Branch of Lands.

[FR Doc. 02–15315 Filed 6–17–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–025–02–1430–EU: G–2–0235]

Realty Action: Sale of Public Land in Harney County, Oregon; Correction

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action, sale of public land; correction.

SUMMARY: Correction to Volume 67, page 21716, last sentence on the page should read, Bidding will be by sealed bid followed by an oral auction to be held at 2 p.m. PST on July 1, 2002, at the Burns District Office, Bureau of Land Management, 28910 Hwy 20 West, Hines, Oregon 97738.

EFFECTIVE DATE: On or before June 17, 2002, interested persons may submit comments regarding the proposed sale to the Acting Three Rivers Resource Area Field Manager at the address described below. Comments or protests must reference a specific parcel and be identified with the appropriate serial number. In the absence of any objections, this proposal will become the determination of the Department of the Interior.

ADDRESSES: Comments, bids, and inquiries should be submitted to the Acting Three Rivers Resource Area Field Manager, Bureau of Land Management, 28910 Hwy 20 West, Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this public land sale is available on the internet at <*http://www.or.blm.gov/Burns*> or may be obtained from the Acting Three Rivers Resource Area

Field Manager; or Holly LaChapelle, Land Law Examiner, at the above address, phone (541) 573–4400.

Dated: May 16, 2002.

William I. Andersen,

Acting Three Rivers Resource Area Field Manager.

[FR Doc. 02–15314 Filed 6–17–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–921–5440–EU–J010; UTU–089084]

Termination of Classification for Price Administrative Site; Utah

(Authority: BLM Manual 1203)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the classification of 10.02 acres of public land classified for the Price Administrative Site. The land is no longer needed for administrative site purposes. The land is temporarily segregated from surface entry and mining by a pending exchange application and will not be opened at this time.

EFFECTIVE DATE: June 18, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Mackiewicz, BLM, Price Field Office, 125 South, 600 West, Price, Utah 84501, (435) 636–3616, or email: *mark_mackiewicz@ut.blm.gov.*

SUPPLEMENTARY INFORMATION: On May 18, 1955, and later on May 8, 1962, the Price Administrative Site was classified for administrative site purposes and retention in public ownership. The Bureau of Land Management has determined that the land is no longer needed for administrative site purposes. The land is temporarily segregated by a pending exchange application and will not be opened at this time. The land is described as follows:

Salt Lake Meridian

T. 14 S., R. 10 E.,
sec .9, lots 11 and 22.

The area described contains 10.02 acres in Carbon County.

The classification for administrative site purposes and public retention dated May 18, 1955, and May 8, 1962 for the Price Administrative Site on the above described land is hereby terminated.

Dated: April 24, 2002.

Roger Zortman,

Deputy State Director.

[FR Doc. 02–15313 Filed 6–17–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1220–PA]

Notice of Intent To Prepare the Gold Belt Travel Management Plan and Amend the Royal Gorge Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an amendment to the Royal Gorge Resource Management Plan, and prepare an Environmental Assessment (EA).

SUMMARY: The Bureau of Land Management (BLM) intends to initiate a comprehensive planning effort to address OHV (Off-Highway Vehicle) travel and other related road and trail issues. The plan, entitled the Gold Belt Travel Management Plan (TMP), will focus specifically on those BLM Public Lands that lay along and near the Gold Belt Tour National Scenic and Historic Byway, and involves Public Lands located throughout portions of Fremont, Teller, Park, and El Paso Counties in the State of Colorado. The TMP will amend the Royal Gorge Resource Management Plan (RMP). The TMP and RMP amendment implement decisions made in the Royal Gorge RMP to limit OHV use to designated roads and trails, and to develop local travel management plans with public participation. The amendment process will be used to establish a system of designated roads and trails that meet the needs of the public and protects the cultural and natural resources of the Public Lands. The amendment and associated Environmental Assessment (EA) will be prepared pursuant to the BLM planning regulations in 43 CFR 1600. The EA will analyze and compare the impacts of any changes in OHV designation and management with the continuation of current management, and other alternatives that may be identified. The TMP is being prepared through coordination with other federal, state and local agencies, and affected public land users.

DATES: Interested parties may submit written comments to the Field Manager at the address listed below. Comments will be accepted on or before July 18, 2002.

ADDRESSES: If you wish to comment, request additional information or request to be put on the mailing list, you may do so by any of several methods. You may mail or hand deliver your comments or requests to: Field Manager, Bureau of Land Management, Royal Gorge Field Office, 3170 East Main Street, Canon City, CO 81212; or you may telephone Dave Walker, Team Leader, at 719–269–8500.

Comments, including names and addresses of respondents, will be available for public review at the BLM office listed above during regular business hours. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Roy L. Masinton, Field Manager, or Dave Walker, Team Leader, at the Royal Gorge Field Office address listed above or by calling (719) 269–8500.

SUPPLEMENTARY INFORMATION: The use of roads and trails for motorized and non-motorized recreation activities is an important use of BLM Public Lands. In response to recommendations made by the Front Range Resource Advisory Council, the BLM proposes developing a travel management plan and establishing OHV travel designations to restrict motorized travel to *designated* roads and trails. BLM has identified general issues anticipated for this planning effort. The preliminary issues include: (1) Impacts to public land users and adjacent private landowners; (2) impacts to wildlife habitat, and (3) impacts to water quality; vegetation, including riparian and wetland areas; and soils. These issues, along with others that may be identified through public participation, will be considered in the planning process.

The planning area involves approximately 140,000 acres of public land located in southwestern El Paso County, northeastern Fremont County, southeastern Park County, and southern Teller County, CO. The Gold Belt Travel Management Plan is being prepared by an interdisciplinary team, the composition of which will be

determined by the issues raised during the planning process. The proposed plan amendment is scheduled for completion in July 2003.

Notification will be made to the Governor of Colorado, El Paso, Fremont, Park and Teller County Commissioners, adjacent landowners, and potentially affected members of the public. A public comment period will be established upon completion of the EA on the Gold Belt Travel Management Plan. The time frame for the public comment period will be announced in the local media.

Roy L. Masinton,

Field Manager.

[FR Doc. 02–15311 Filed 6–17–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket Nos. 4310–DN–P and MT–924–02–1430–FM]

Notice of Intent To Amend the Judith-Valley-Phillips Resource Management Plan; Fergus County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend the Judith-Valley-Phillips Resource Management Plan.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) will consider amending the Judith-Valley-Phillips Resource Management Plan regarding the management of public lands in Fergus County. The BLM proposes exchanging 160 acres of Federal land for 161.30 acres of private land, all in Fergus County. The Federal land is legally described as:

Fergus County

T14N, R21E, PMM
Sec. 30: SENE, E2SE
Sec. 31: NENE

Disposal of the Federal land described above was not analyzed in the Judith-Valley-Phillips Resource Management Plan (RMP) and associated Environmental Impact Statement. Disposal of the Federal land requires that the specific tracts be identified in the land use plan with the criteria to be met for exchange and discussion of how the criteria have been satisfied. This will be part of the plan amendment being considered and an Environmental Assessment prepared to analyze the effects of disposal.

ADDRESSES: Comments should be sent to David L. Mari, Field Manager, Lewistown Field Office, P.O. Box 1160, Lewistown, MT 59457–1160. Comments, including names and street addresses of respondents, will be available for public review at the Lewistown Field Office during regular business hours. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

DATES: Comments and recommendations on this notice to amend the Judith-Valley-Phillips RMP should be received on or before July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Loretta Park, Realty Specialist, 406–538–1910.

David L. Mari,

Field Manager.

[FR Doc. 02–15310 Filed 6–17–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–02–1420–BJ]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

New Mexico Principal Meridian, New Mexico:

T. 17 N., R. 8 E., sec. 35, approved March 28, 2002, for Group 984 NM T. 30 N., R. 15 W., approved April 29, 2002, for Group 988 NM

Indian Meridian, Oklahoma:

T. 5 N., R. 11 W., approved May 1, 2002, for Group 93 OK

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, PO Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: May 15, 2002.

Jay M. Innes,

Acting Chief Cadastral Surveyor for New Mexico.

[FR Doc. 02–15316 Filed 6–17–02; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–050–2001–1060–JJ]

Notice of Intent To Remove Excess and Stray Wild Horses

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to remove excess and stray wild horses.

SUMMARY: The Lander Field Office of the Bureau of Land Management in Wyoming plans to remove 80—90 excess horses from the Crooks Mountain HMA, 220 excess horses from the Green Mountain HMA and 10—20 stray horses from an area south and east of the Crooks Mountain HMA into which horses have strayed outside of the HMA.

SUPPLEMENTARY INFORMATION: The Wild, Free Roaming Horse and Burro Act (PL. 92–195) requires that, among other things, horses that exceed the Appropriate Management Levels (AMLs) established for them or stray from designated Herd Management Areas (HMAs) be removed. In order to accomplish that, the Lander Field Office of the Bureau of Land Management in Wyoming plans to remove 80—90 excess horses from the Crooks Mountain HMA, 220 excess horses from the Green

Mountain HMA and 10—20 stray horses from an area south and east of the Crooks Mountain HMA into which horses have strayed outside of the HMA. In addition, the Rawlins Field Office plans to remove approximately 700 horses from the Adobe Town HMA and the far Eastern portion of the Salt Wells HMA which adjoins the Adobe Town HMA and horses freely move back and forth, and approximately 150 stray horses from an area outside and to the North of the Adobe Town HMA known as I–80 South. The removals are scheduled for the summer/fall seasons of 2002 and will begin approximately July 15. Specific dates for the various HMAs depend on the weather and soil conditions, and possibly other factors unforseen at this time. None of these actions will result in taking any HMA below the AML range established for it. Environmental documents relating to these operations may be viewed at *http://www.wy.blm.gov/wh/docs.htm.*

FOR FURTHER INFORMATION CONTACT: For further information, please contact Roy Packer, Bureau of Land Management, Lander Field Office, 1335 Main Street, P.O. Box 589, Lander, Wyoming 82520, (307) 332–8400. Chuck Reed, Bureau of Land Management, 1300 N. Third, P.O. Box 2407, Rawlins, Wyoming 82301–2407, Phone: (307) 328–4200 or (307) 328–4256.

Dated: April 29, 2002.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 02–15307 Filed 6–17–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement\Fire Management Plan Yosemite National Park Madera, Mariposa and Tuolumne Counties, California; Notice of Availability

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the National Park Service, Department of the Interior, has prepared a Draft Environmental Impact Statement identifying and evaluating four alternatives for a Fire Management Plan for Yosemite National Park, California. Potential impacts, and appropriate mitigations, are assessed for each alternative. When approved, the plan will guide all future fire management actions in Yosemite National Park.

This Draft Yosemite Fire Management Plan/Environmental Impact Statement (DYFMP/EIS) documents the environmental impact analysis of three action alternatives, and a no action alternative. These fire management alternatives are needed to meet public safety, natural and cultural resource management, and wildland/urban interface protection objectives, in Yosemite National Park and at the El Portal Administrative Site. The action alternatives vary in their schedule for completing ecosystem restoration and wildland/urban interface protection work, and in their mix of treatments available to the program for completing work. The no-action alternative describes the existing fire management program, which has been locally effective, but unable to restore large areas of the park and administrative site to natural conditions or to keep more areas from progressing to the point of needing restoration. As a result, the incidence of catastrophic fire has increased in recent decades.

Alternatives Analyzed

Under the preferred alternative (Alternative D, Multiple Action), aggressive treatment strategies would be used in wildland/urban interface (homes, businesses, and administrative buildings) if needed, while achieving ecosystem restoration goals in other areas by using prescribed fire and passive hazard reduction techniques. The Multiple Action Alternative would decrease fuels in wildland/urban interface areas over a period of 6–8 years and restore fire to the ecosystem in 15–20 years. This alternative would reduce fuels on 1,095 acres per year in the wildland/urban interface (7,664 acres total) and would restore the natural fire regime by treating between 1,817 and 9,194 acres per year (31,503 to 160,894 acres total). This alternative would require more time to accomplish wildland/urban interface protection and ecosystem restoration than under Alternative B, Aggressive Action Alternative, but less than under Alternatives A and C, Passive Action Alternative. It would accomplish the work with a combination of National Park Service and other agency fire crews, the park forestry crew, and some contract labor.

Under the No-Action Alternative (Alternative A), the existing direction and level of accomplishment in Yosemite's fire management program would continue. This alternative would use the strategies of the existing Fire Management Plan, written in 1990. These strategies include prescribed fire, management of natural ignitions (managed wildland fire), fire suppression, and hand cutting followed by pile burning and prescribed fire. This program has not been able to meet park needs because of the limited amount of annual accomplishment. The Fire Management Units for this alternative are the same as the ''zones'' used in the 1990 plan: Zone I—Prescribed Natural Fire Zone; Zone II—Conditional Fire Zone; and Zone III—Suppression Zone. Under this program the park has averaged 1,472 acres of prescribed burning and 2,567 acres of managed wildland fire each year. This does not approach the annual target of 16,000 acres that would need to burn annually to simulate natural conditions. While over the last decade the park has reduced hazardous levels of fuels near developed areas, the goal of providing an open defensible forest in and around every community may not ever be met at the current rate of work. Less than 25 acres per year, in each of the larger wildland/urban interface areas (Yosemite Valley, El Portal, Wawona, Foresta, Hodgdon Meadow, and Yosemite West), have been treated.

Under Alternative B (Agressive Action), active efforts would be taken to reduce fuels in and near developed areas (wildland/urban interface) within a period of five years and accomplish fire-related ecosystem restoration goals within 10–15 years. This alternative would reduce fuels on an average of 1,533 acres per year in the wildland/urban interface over five years (7,664 acres total) and restore the natural fire regime to between 2,520 and 12,872 acres per year, for a total of between 31,503 and 160,894 acres over the next 10–15 years. Prescribed burning would be increased dramatically over present levels and lightening fires would be managed where practicable. Work under this alternative would apply aggressive fuel reduction treatments to wildland/urban interface areas and accomplish park restoration goals in the least amount of time compared to the other alternatives. Median and maximum fire return interval departure analyses were used to determine locations and set annual goals (range of acres) for treatments, using the various restoration, maintenance, and fuel reduction strategies.

Under Alternative C (Passive Action), efforts would be taken to decrease fuels in wildland/urban interface areas within a period of 10 years, and accomplish ecosystem restoration goals in 25 years. Alternative C would reduce fuels in wildland/urban interface areas by an average of 766 acres per year (7664 acres total over 10 years), and the fire regime would be restored in areas having

missed three or more fire return intervals by treating between 1,260 and 6,436 acres per year (31,503 to 160,894 acres over 25 years). Prescribed burning would be increased over what the current program accomplished but not as much as under Alternative B and D. Fuel reduction work under this alternative would apply less aggressive treatments to wildland/urban interface areas. Under this alternative, it would take more time than under Alternative B and the proposed action, but less than would be needed under Alternative A to accomplish the park's minimum goals. By the time all areas were treated, however, many areas would have missed another fire return interval or two, thus, the risk of stand replacement fire would remain high throughout the restoration period. The basis for the difference in annual accomplishment, when comparing alternatives, is the time frame proposed for reaching the restoration targets and the type of treatments allowed. Because of this time frame, the number of acres to be treated each year would be the least among the action alternatives.

Planning Background

The DYFMP/EIS was prepared pursuant to the National Environmental Policy Act. Public outreach was initiated in April 1999. A Notice of Intent was published in the **Federal Register** on March 22, 2001. Scoping comments were accepted until April 30, 2001. One planning meeting was held in Yosemite Valley. During this scoping period, the NPS held discussions and briefings with: local communities; local residents and home owners associations (Forest, Wawona, Yosemite West, and El Portal); local, regional and state fire organizations; air quality regulators; other agency representatives; park staff, elected officials; public service organizations; and other interested members of the public. Nearly 100 letters concerning the Draft YFMP/EIS planning process were received. The major issues raised during this period are summarized in Chapter 1, Purpose of and Need for the Action.

Public Meetings

In order to facilitate public review and comment on the draft DYFMP/EIS, the Superintendent will schedule public meetings in the Yosemite, Oakhurst, Mariposa, Sonora and one location on the east side of the park. Detailed information on location and times for each of the public meetings will be published in local and regional newspapers several weeks in advance and listed on the park's Webpage. Yosemite National Park management and planning officials will attend all sessions to present the DYFMP/EIS, to receive oral and written comments, and to answer questions. Participants are encouraged to review the document prior to attending a meeting.

Comments

The draft YFMP/EIS will be sent directly to those who have requested it. Copies will be available at park headquarters in Yosemite Valley, the Warehouse Building in El Portal, and at local and regional libraries (*i.e.,* Mariposa, Oakhurst, Sonora, San Francisco and Los Angeles). Also, the complete document will be posted on the Yosemite National Park webpage *http://www.nps.gov/yose/planning*).

Written comments must be postmarked (or transmitted by e-mail) no later than 60 days from the date of publication of the EPAs filing notice in the **Federal Register**—as soon as this date is determined it will be announced on the park's webpage. All comments should be addressed to the Superintendent (and mailed to Yosemite National Park, P.O. Box 577, Yosemite, California 95389 (Attn: Fire Management Plan); or e-mailed to: *Yose_Planning@nps.gov* (in the subject line, type: Fire Management Plan)).

All comments received will be available for public review in the park's research library. If individuals submitting comments request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses, and, anonymous comments may not be considered.

Decision Process

Depending upon the degree of public interest and response from other agencies and organizations, at this time it is anticipated that the Final Fire Management Plan EIS will be completed during 2002; availability of the document will be duly noticed in the **Federal Register**. Subsequently, notice of an approved Record of Decision would be published in the **Federal Register** not sooner than thirty days after the final document is distributed. As a delegated EIS, the official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; subsequently the official responsible for implementation is the Superintendent, Yosemite National Park.

Dated: April 2, 2002.

Arthur E. Eck,

Acting Regional Director, Pacific West Region.

[FR Doc. 02–15230 Filed 6–17–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service Subsistence Resource Commission; Meeting

AGENCY: National Park Service.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a Meeting of the Denali National Park Subsistence Resource Commission's will be held on Friday, August 23, 2002, at the McKinley Village Community Center, McKinley Village, Alaska. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. The purpose of the meeting will be to continue work on currently authorized and proposed National Park Service subsistence hunting program recommendations including other related subsistence management issues.

The following agenda items will be discussed.

1. Call to order (SRC Chair).
2. Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's Welcome and Introductions.
4. Review and Adopt Agenda.
5. Review and adopt minutes from last meeting.
6. Public and agency comments.
7. Denali Back Country Management Plan updates.
8. Review Federal Subsistence Fisheries Proposals for 2003.
9. Moose management issues in GMU 16B.
10. Nikolai Subsistence Community Use Profiles and Fisheries TEK study update.
11. Spruce Creek access issues.
12. Alaska Board of Game Actions.
13. Federal Subsistence Board Actions.
14. Public and agency comments.
15. Set time and place of next Denali National Park SRC meeting.
16. Adjournment.

DATES: The meeting will be held from 9:00 a.m. to 5:00 p.m. on Friday, August 23, 2002.

LOCATION: The meeting will be held at the McKinley Village Community Center, McKinley Village, Alaska.

FOR FURTHER INFORMATION CONTACT: Persons who want further information concerning the meeting may contact Superintendent Paul Anderson at (907) 683–2294 or Hollis Twitchell, Subsistence and Cultural Resources Coordinator at (907) 683–9544 or (907) 455–0673.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operation in accordance with the provisions of the Federal Advisory Committees Act.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from: Superintendent Denali National Park and Preserve, P.O. Box 9, Denali Park, Alaska 99755.

Robert L. Amberger,

Regional Director, National Park Service, Alaska Region.

[FR Doc. 02–15291 Filed 6–17–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 25, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St., NW., Suite 400, Washington DC 20002; or by fax, 202–343–1836. Written or faxed comments should be submitted by July 3, 2002.

Carol D. Shull,

Keeper of the National Register.

GEORGIA

Fulton County

Lakewood Heights Historic District, Jct. of Jonesboro Rd. and Lakewood Ave., Atlanta, 02000712

Harris County

Callaway, Cason and Virginia, House, 5929 GA 116, Hamilton, 02000713

Whitfield County

McCarty Subdivision Historic District, Thornton Place, Willow Park Dr., Sunset Cirtcle, and Walnut Ave., Dalton, 02000714

KANSAS

Doniphan County

Doniphan County Courthouse Square Historic District, Roughly bounded by E. Walnut, E Chestnut, S. Main, S. Liberty Sts., Troy, 02000717

Ellsworth County

Midland Hotel, 414 26th Ave., Wilson, 02000716

Leavenworth County

Arch Street Historic District, Roughly bounded by Arch, Pine, S. Second and S. Third Sts., Leavenworth, 02000718

North Broadway Historic District, Along N. Broadway bet. Seneca and Ottawa Sts., Leavenworth, 02000719

South Esplanade Historic District, Roughly bounded by Arch, Olive and S. Second Sts and RR, Leavenworth, 02000720

Third Avenue Historic District, Roughly bounded by 2nd and Aves. and Congress and Middle Sts, Leavenworth, 02000721

Union Park Historic District, Roughly bounded by Chestnut, Congress, S. 6th and W. 7th Sts., Leavenworth, 02000722

Shawnee County

Fire Station No. 2—Topeka, 719–723 Van Buren, Topeka, 02000715

MONTANA

Mineral County

Gildersleeve Mine, Lolo National Forest, Superior, 02000723

[FR Doc. 02–15231 Filed 6–17–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of Native Village of Barrow Inupiat Traditional Government and Ukpeagvik Inupiat Corporation.

In 1912, human remains representing a minimum of 121 individuals were collected by Vilhjalmur Stefansson from Point Barrow, North Slope Borough, AK, during an American Museum of Natural History expedition. No known individuals were identified. No associated funerary objects are present.

In 1912, human remains representing a minimum of one individual were collected by Vilhajlmur Stefansson from Birnirk, three miles northeast of Barrow, North Slope Borough, AK, during an American Museum of Natural History expedition. No known individual was identified. No associated funerary objects are present.

These individuals have been identified as Native American based on geographic information and documentation at the American Museum of Natural History. Consultation with tribal representatives, geographic location, and documentation at the American Museum of Natural History suggest that a relationship exists between contemporary inhabitants of the Native Village of Barrow Inupiat Traditional Government and these human remains from Point Barrow, AK, and Birnirk, AK.

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 122 individuals of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Native Village of Barrow Inupiat Traditional Government and Ukpeagvik Inupiat Corporation.

This notice has been sent to officials of the Native Village of Barrow Inupiat Traditional Government and Ukpeagvik Inupiat Corporation. Representatives of

any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Elaine Guthrie, Acting Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024-5192, telephone (212) 769-5835, before July 18, 2002. Repatriation of the human remains to the Native Village of Barrow Inupiat Traditional Government and Ukpeagvik Inupiat Corporation may begin after that date if no additional claimants come forward.

Dated: April 25, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–15293 Filed 6–17–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Springfield Science Museum, Springfield, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Springfield Science Museum, Springfield, MA, that meets the definition of ''sacred object'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The sacred object is a hide pouch, 5 1/2 in. long and 2 1/2 in. wide with a buckskin tie, containing black mineral pigment.

In 1991, this item was purchased by the Springfield Science Museum from the Northeastern Taxidermy Studio of Catskill, NY. Members of the Navajo Nation, Arizona, New Mexico & Utah have identified this item as necessary for the continued practice of traditional Navajo religion by present-day adherents. Representatives of the Navajo Nation and traditional religious leaders have confirmed that this item is needed for on-going ceremonial and religious traditions and have requested that this item be repatriated. The Springfield Science Museum's records indicate that the object under consideration for repatriation is Navajo in origin and was most likely used by Navajo medicine men prior to 1900.

Based on the above-mentioned information, officials of the Springfield Science Museum in consultation with representatives of the Navajo Nation have determined that, pursuant to 43 CFR 10.2 (d)(3), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Springfield Science Museum also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between this sacred object and the Navajo Nation, Arizona, New Mexico & Utah.

This notice has been sent to officials of the Navajo Nation, Arizona, New Mexico & Utah. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this sacred object should contact John Pretola, Curator of Anthropology, Springfield Science Museum, 236 State Street, Springfield, MA 01103, telephone (413) 263-6800, before July 18, 2002. Repatriation of this sacred object to the Navajo Nation, Arizona, New Mexico & Utah may begin after that date if no additional claimants come forward.

Dated: May 6, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–15292 Filed 6–17–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, et seq.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States and the State of Illinois* v. *Alpha Construction, et al.,* Civil Action No. 02 C 3609, was lodged on May 30, 2002, with the United States District Court for the Northern District of Illinois.

The proposed Consent Decree concerns the Lenz Oil Services, Inc. Superfund Site (''Site'') located near the City of Lemont in southwest Du Page County, Illinois. Lenz Oil formerly operated a waste oil and solvent recycling, storage and transfer facility. The Site is approximately 600 feet northwest of the Des Plaines River, partially within a designated flood plain, and includes contiguous areas contaminated by releases of hazardous substances from Lenz Oil Services, Inc., and approximately 1.5 acres of shallow aquifer contamination. Pursuant to the proposed Consent Decree, 47 generators alleged to have arranged for disposal of waste at the Site are resolving their liability to the United States and the State of Illinois under sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607(a), and certain provisions of the Illinois Environmental Protection Act. Twenty-two settlers are cashing out in this settlement, and twenty-five of the settlers will perform work at the Site. The work to be performed is estimated to cost between $8 million and $12.5 million dollars (excluding oversight costs) depending on whether the primary, or one of several contingent remedies is ultimately implemented.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, United States Department of Justice of Department of Justice, and sent: (1) By first class mail c/o Chief, Environmental Enforcement Section, P.O. Box 7611, Washington, DC; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States and the State of Illinois* v. *Alpha Construction Co., et al.,* DJ #90–11–3–1767.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Northern District of Illinois, 219 So. Dearborn Street, Chicago, Illinois 60604, at the Region 5 office of the Environmental Protection Agency, 77 West Jackson Blvd., 7th Floor, Chicago, Illinois 60604, and at the Lemont Village Hall, 508 Lemont Street, Lemont, Illinois 60439. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cents per page reproduction cost). Upon requesting a copy, please mail a

check payable to the ''U.S. Treasury,'' in the amount of $96.75 for the proposed Consent Decree with all attachments, or for $32.35 for the proposed Consent Decree only, to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States and the State of Illinois* v. *Alpha Construction Co., et al.,* DJ #90–11–3–1767.

William Brighton,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 02–15234 Filed 6–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Modified Consent Decree Under the Clean Water Act and Toxic Substances Control Act

Notice is hereby given that on April 30, 2002, a proposed Modified Consent Decree and Judgment was lodged in *United States, et al.* v. *City of Gary, Indiana, et al.,* Civil Action Nos. H 78–29 and H 86–540, in the United States District Court for the Northern District of Indiana (Hammond Division).

Under previous resolutions of these civil actions, including the most recent one in 1992, the United States and certain agencies of the State of Indiana secured relief under the Clean Water Act and the Toxic Substances Control Act to address violations of those laws as they relate the wastewater treatment plant that is owned and/or operated by the Defendants—City of Gary, Indiana, and the Gary Sanitary District (a component of the City government).

While prior settlement of these enforcement actions have secured parts of the compliance and clean up sought by the United States and the State, the federal and state governments concluded that the Defendants needed to make additional efforts to secure compliance with the prior settlement. Negotiations over the appropriate scope and nature of that work resulted in the Modified consent Decree, which is signed by the Defendants, the United States, and the State, and which is now lodged with the District Court.

Like the prior settlement of these actions, the Modified Consent Decree proposed here addresses two major areas: the wastewater treatment plant and the Ralston Street Lagoon, which is located near the treatment plant and contains contaminated sludges and other wastes.

The Modified Consent Decree preserves many substantive provisions of the prior settlement, including enforcement under the Decree of water pollution discharge limits that apply to the wastewater treatment plant.

The Modified Consent Decree imposes new requirements on the Defendants concerning the Ralston Street Lagoon, including (i) undertaking of a detailed assessment of competing methods for disposing of waste material in that lagoon, and (ii) completing the disposal method selected for the lagoon by the federal government, under criteria supplied by the Modified Consent Decree.

The Modified Consent Decree also requires the City and its Sanitary District to carry out some additional clean up of the contaminated sediment now found in the Grand Calumet River—which is the receiving water for the wastewater treatment plant. The Defendants also must pay a $150,000 civil penalty under the Decree. Finally, the Office of Special Administrator, created under the prior settlement of this matter as part of encouraging compliance with settlement by the City, remains in place under the Modified Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Modified Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. The comments should refer to *United States, et al.* v. *City of Gary, Indiana, et al.,* (N.D. Ind.), D.J. Ref. 90–5–1–1–2601B.

The Modified Consent Decree may be examined at the Office of the United States Attorney, Northern District of Indiana, at 5400 Federal Plaza, Suite 1500, Hammond, IN 46320. A copy of the Modified Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $17.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–15324 Filed 6–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act and the Federal Water Pollution Control Act

Under 42 U.S.C. 9622(d)(2) and 28 CFR 50.7, notice is hereby given that on June 4, 2002, a proposed Consent Decree in *United States et al.* v. *Mulberry Phosphates, Inc.,* Civil Action No. 8–01–CV–692–T–23TGW, was lodged with the United States District Court for the Middle District of Florida.

In this action the United States sought natural resource damages for injuries to natural resources caused by a 1997 spill of over 50 million gallons of process water into the Alafia River from a phosphoric acid/fertilizer production facility owned by defendant Mulberry Phosphates, Inc. in Mulberry, Florida. The Florida Department of Environmental Protection and the Environmental Protection Commission of Hillsborough County are also parties to the settlement. Under the settlement, plaintiffs will recover: (1) Just over $3.65 million to plan, implement, and oversee projects to restore oyster reef, estuarine wetlands and riverine habitat in the affected watershed to compensate for the natural resource injuries caused by the spill, and (2) approximately $1 million to reimburse Federal, State and county agencies for costs each incurred in assessing the environmental damages.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States et al.* v. *Mulberry Phosphates, Inc.,* D.J. Ref. 90–11–2–1368.

The Consent Decree may be examined at the Federal Court House, Sam M. Gibbons United States Courthouse, 800 N. Florida Avenue, Clerk's Office-Second Floor, Tampa, Florida, 33602. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of

$14.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–15235 Filed 6–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 271–2002]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to modify its system of records formerly entitled, ''custodial and Security Record System, JUSTICE/BOP–001''. The system notice, which was last published on September 28, 1978 (43 FR 44732), is now being modified and will become effective sixty (60) days from the date of publication.

As previously published, the system included investigative and physical security data concerning current and former inmates under the custody of the Attorney General and thereby of the Bureau of Prisons under 18 U.S.C. 4042. The Bureau is expanding this system to include additional categories of investigative data compiled by staff from the Bureau's Office of Intelligence and is deleting those categories of data that are contained in another system of records entitled, ''Inmate Central Record System, JUSTICE/BOP–005.'' Staff in the Bureau's Office of Intelligence, Correctional Program Division, examine and investigate serious incidents and institution disturbances to protect inmates, Bureau staff, and the public. The Bureau has developed a record system to keep track of incidents and disturbances and to aid in investigatory efforts. This system enables Bureau staff to investigate and document prison disturbances, and verify reported incidents to other law enforcement authorities, courts, and administrative bodies when necessary. To reflect the additional data, this system is being re-named the ''Prison Security and Intelligence Record System, JUSTICE/BOP–001.''

The Bureau has also reorganized and expanded the routine uses, re-designated the system manager, clarified access procedures and updated the sections relating to storage and safeguards to reflect technological advances and new agency practices now in effect. In addition, the Bureau has updated the statutory authority citations.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a thirty (30) day period in which to comment on the routine uses of a new system. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires that it be given a forty (40) day period in which to review the system.

Therefore, please submit any comments by July 18, 2002. The public, OMB and Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

A description of the system is provided below. In addition, the Department of Justice has provided a report on the proposed system to OMB and the Congress, in accordance with the Privacy Act, 5 U.S.C. 552a.

Dated: June 5, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General For Administration.

JUSTICE/BOP–001

SYSTEM NAME:

Prison Security and Intelligence Record System.

SYSTEM LOCATION:

Records may be retained at any of the Bureau's facilities, the Regional Offices and the Central Office. A list of current addresses is contained in 28 CFR part 503 and on the Internet at *http://www.bop.gov.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former inmates under the custody of the Attorney General and/or the Director of the Bureau of Prisons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include:

(a) Identification information including name, register number (if an inmate), and fingerprint information; (b) Information concerning escape plots, assaults, and disturbances; (c) Investigate reports; (d) Intelligence information; (e) Confidential Informant information; (f) FBI referral records; (g) Telephone call records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under the authority of 18 U.S.C. 3621, 4042, and 5003.

PURPOSE OF THE SYSTEM:

The records in this system are maintained to assist the Bureau in investigating and documenting inmate incidents and prison disturbances for purposes of guarding the safety of other inmates, Bureau staff and the general public. This system assists Bureau staff in gathering and organizing information on serious prison incidents such as escape plots, inmate assaults, major prison disturbances, investigative reports and confidential informant information. This system is necessary to better ensure prison security and better protect inmates, staff and the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant data from this system may be disclosed as follows:

(a) As permitted in the Privacy Act, 5 U.S.C. 552a(b)(1), to officers and employees of the Department of Justice who have a need for the information in the performance of their duties;

(b) To federal, state, local, tribal, international and foreign law enforcement officials who have a need for the information to perform their duties *e.g.,* in the course of apprehensions, investigations, possible criminal prosecutions, civil court actions, regulatory proceedings, inmate disciplinary hearings, parole hearings, responding to emergencies, or other law enforcement activity; information may also be disclosed to such law enforcement agencies in order to solicit or obtain data needed by prison officials for law enforcement purposes;

(c) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of an individual who is the subject of the record;

(d) To the National Archives and Records Administration (NARA) and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(e) In a proceeding before a court, grand jury, or administrative or regulatory body when the records are determined by the Department of Justice to be arguably relevant to the proceeding;

(f) To a federal, state, or local licensing agency or association which requires information concerning the suitability or eligibility of an individual for a license or permit;

(g) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to

accomplish a Bureau function related to this system of records;

(h) To any person or entity to the extent necessary to prevent immediate loss of life or serious bodily injury;

(i) Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored in electronic media in Bureau facilities via a configuration of personal computer, client/server, and mainframe systems architecture. Computerized records are maintained on hard disk, floppy diskettes, magnetic tapes, compact discs (CDs) and/or optical disks. Documentary records are maintained in microfilm, manual file folders and/or index card files.

RETRIEVABILITY:

Records are retrievable by institution, date, type of incident, and, where available, by inmate name.

SAFEGUARDS:

Information is safeguarded in accordance with Bureau rules and policy governing sensitive data and automated information systems security and access. These safeguards include the maintenance of records and technical equipment in restricted areas, and the required use of proper passwords and user identification codes to access the system. Only those Bureau personnel who require access to perform their official duties may access the system equipment and the information in the system. Documentary records are maintained in secure areas in locked, fireproof cabinets, in guarded buildings and accessed only by authorized personnel.

RETENTION AND DISPOSAL:

Records in this system are retained for five (5) years after initial documentation of the incident and, if appropriate, may be incorporated into another system of records, e.g. JUSTICE/BOP–005, Inmate Central Record System. Records concerning major prison disturbances are sent to the National Archives for permanent storage. Non-criminal activity files are kept at the institution for five years, after which they are destroyed by shredding. Automated records are destroyed by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Correctional Programs Division, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURE:

All requests for records may be made by writing to the Director, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534, and should be clearly marked ''Privacy Act Request.'' This system is exempt, under 5 U.S.C. 552a (j), from some access. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Bureau staff, inmates, confidential informants, and law enforcement officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j), the Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(2) and (3), (e)(4)(H), (e)(8), (f), and (g). Rules have been promulgated in accordance with the requirement of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register** and codified at 28 CFR 16.97(a) and (b).

[FR Doc. 02–15296 Filed 6–17–02; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 272–2002]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to modify its system of records entitled ''Inmate Administrative Remedy Record System, JUSTICE/BOP–004.'' This system, which was last published on September 28, 1978 (43 FR 44734), is now being modified and will become effective 60 days from the date of publication.

The Bureau is updating the system's locations, description of the Categories of Records, and the Purpose of the system. The Bureau is modifying the system to include all individuals placed directly under the custody of the Bureau pursuant to 18 U.S.C. 3621 and 5003 (state inmates). The sections describing Storage and Safeguards have been updated to include new technical improvements, and agency practices, including digital recordings and Compact Discs (CDs). Three (3) former routine uses have been incorporated into the Purpose Section of the Notice. The remainder of the Routine Use section has been modified and expanded. The exemptions previously promulgated at 28 CFR 16.97 (a) and (b) remain the same.

Title 5 U.S.C. 552a (e)(4) and (11) provide that the public be provided a 30-day period in which to comment. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given a 40-day period in which to review the system. Therefore, please submit any comments by July 18, 2002. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

A description of the modified system is provided below.

Dated: June 5, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/BOP–004

SYSTEM NAME:

Inmate Administrative Remedy Record System.

SYSTEM LOCATION:

Records may be retained at the Central Office, Regional Offices, or at any of the Federal Bureau of Prisons (Bureau) facilities, or at any location operated by a contractor authorized to provide computer and/or correctional services to Bureau inmates. A list of Bureau facilities may be found at 28 CFR part 503 and on the Internet at *http://www.bop.gov.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former inmates, including pre-trial detainees, under the custody of the Attorney General and/or the Director of the Bureau of Prisons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: (1) Inmate information including (a) name; (b) register number; (c) institution location; (d) current offense and sentence; (e) prior criminal record; (f) social background; (g) institution adjustment; (h) institution program data; (i) medical information; and (j) personal property data; (2) complaint information including copies of BOP–9's (institution level complaints), BOP–10's (Region appeals) and BOP–11's (Central Office appeals); and (3) processing information, including dates of filing and responses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained under authority of 18 U.S.C. 3621, 4042, 5003, and 28 CFR part 542.

PURPOSE OF THE SYSTEM:

The Bureau maintains records of the receipt, processing and responses to grievances filed by inmates pursuant to the Bureau's Administrative Remedy Program, which was established to provide inmates with a means to seek formal review of issues relating to conditions of their confinement. The related uses for which the Bureau maintains the system include (1) to provide a source of information for reconsideration or amendment of Bureau policy with regard to its operation; (2) to maintain a source of information for purposes of defending civil actions filed against the Bureau by inmates; and (3) to provide a source of information for statistical reports furnished to federal courts for the purpose of determining exhaustion of administrative remedies and the effectiveness of the Administrative Remedy Program in reducing the backlog of cases filed in federal court.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant data from this system will be disclosed as follows:

(a) To federal, state, local, foreign and international law enforcement agencies and officials for law enforcement purposes such as civil court actions, regulatory proceedings, responding to an emergency, inmate disciplinary proceedings; or for such law enforcement needs as prison administration, investigations, and possible criminal prosecutions.

(b) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records;

(c) To Members of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the record subject;

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(e) To the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(f) In a proceeding before a court, grand jury, or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding;

(g) To a federal, state, or local licensing agency or association which requires information concerning the suitability or eligibility of an individual for a license or permit and;

(h) Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored in electronic media via a configuration of personal computer, client/server, and mainframe systems architecture and may be accessed by only those staff with a need-to-know at all Bureau and contractor facilities. Some information may be stored in other computerized media, e.g., hard disk, floppy diskettes, magnetic tape, digital recordings, Compact Discs (CDs), and/or optical disks. Documentary records are maintained in manual file folders.

RETRIEVABILITY:

Documents are indexed by name and/or register number.

SAFEGUARDS:

Automated information is safeguarded in accordance with Department of Justice and Bureau of Prisons rules and policy governing automated information systems security and access. These safeguards include the maintenance of records and technical equipment in restricted areas, *e.g.* controlled access buildings, and the required use of proper passwords and user identification codes to access the system. Manual records are stored in a file room. All records in Bureau facilities are maintained in guarded buildings.

RETENTION AND DISPOSAL:

Automated records in this system are maintained on magnetic medium ordinarily for six years from the date created, at which time they will be overwritten with new data. Paper documents are maintained for a period of three years from expiration of sentence of the inmate, at which time they are destroyed by shredding. Indexes are maintained for a period of twenty (20) years, at which time they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director/General Counsel, Federal Bureau of Prisons; 320 First Street NW., Washington, DC 20534.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

All requests for records may be made by writing to the System Manager identified above, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534. The envelope should be clearly marked ''Privacy Act Request.'' This system of records is exempted from access pursuant to 5 U.S.C. 552a(j). A determination as to the applicability of the exemption to a particular record(s) shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Records are generated by: inmates; individuals covered by the system;

Bureau staff; Federal, State, local, tribal, and foreign law enforcement agencies; and Federal/State probation and judicial offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(2), (e)(3), (e)(4)(H), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register** and codified at 28 CFR 16.97 (a) and (b).

[FR Doc. 02–15297 Filed 6–17–02; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 273–2002]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to modify its system of records entitled ''Inmate Safety and Accident Compensation Record System, JUSTICE/BOP–008.'' This system, which was last published on September 28, 1978 (43 FR 44736), is now being modified and will become effective 60 days from the date of publication.

The Bureau is updating the system's locations and modifying the system to include all individuals placed directly under the custody of the Bureau pursuant to 18 U.S.C. 3621 and 5003 (state inmates). Several sections have been modified to reflect new technical improvements such as digital recordings and Compact Discs (CDs) and new agency practices regarding the storage and safeguarding of automated information. The entire Routine Use section has been reorganized and expanded to add new routine uses. Several previously-published routine uses have been incorporated into the Purpose Section of the Notice. The system manager has been re-designated. The exemptions from certain provisions of the Privacy Act remain the same as previously promulgated and codified in 28 CFR 16.97(a) and (b).

Title 5 U.S.C. 552a (e)(4) and (11) provide that the public be provided a 30-day period in which to comment. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given a 40-day period in which to review the system. Therefore, please submit any comments by July 18, 2002.

The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification. A description of the modified system is provided below.

Dated: June 5, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/BOP–008

SYSTEM NAME:

Inmate Safety and Accident Compensation Record System.

SYSTEM LOCATION:

Records may be retained at the Central Office, Regional Offices, or at any of the Federal Bureau of Prisons (Bureau) facilities, or at any location operated by a contractor authorized to provide computer and/or correctional service to Bureau inmates. A list of Bureau facilities may be found at 28 CFR part 503 and on the Internet at *http://www.bop.gov.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former inmates, including pre-trial detainees, under the custody of the Attorney General and/or the Director of the Bureau of Prisons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include (a) inmate identification data including name, register number, location; (b) information concerning inmate accident/injuries sustained during : (1) Work related accidents; (2) recreation; (3) vehicle accidents; (4) assaults; and (5) other non-work-related accidents; and (c) processing data including dates of receipt of claims and responses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained under authority of 18 U.S.C. 3621, 4042, 4126, and 5003.

PURPOSE OF THE SYSTEM:

This system of records is maintained to assist in the processing of inmate claims for injuries sustained during (1) work related accidents; (2) recreation; (3) vehicle accidents; (4) assaults; and (5) other non-work-related accidents. In addition, this system provides: (a) documented records of inmate accidents and injuries for the purpose of measuring safety programs' effectiveness; (b) an information source of compliance with the Occupational Safety and Health Act; (c) documented records of inmate accidents, injuries, and disabilities for adjudication of claims by inmates filed under the Inmate Accident Compensation System established pursuant to 18 U.S.C. 4126 and regulations contained in 28 C.F.R. Part 301; and (d) background information and litigation reports to United States Attorneys for purpose of defending civil actions filed against the Bureau.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant data from this system may be disclosed as follows:

(a) To federal, state, local, foreign and international law enforcement agencies and officials for law enforcement purposes such as civil court actions, regulatory proceedings, responding to an emergency, inmate disciplinary proceedings; or for such law enforcement needs as prison administration, investigations, and possible criminal prosecutions;

(b) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(c) To Members of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the record subject;

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(e) To consultant physicians treating inmates following release from custody for the purpose of providing medical history in conjunction with further treatment of the individual inmate;

(f) To the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(g) In a proceeding before a court, grand jury, or administrative or regulatory body when the records are determined by the Department of Justice to be arguably relevant to the proceeding;

(h) To a federal, state or local licensing agency or association which

requires information concerning the suitability or eligibility of an individual for a license or permit;

(i) Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored in electronic media via a configuration of personal computer, client/server, and mainframe systems architecture and may be accessed by those with a need-to-know at all Bureau and contractor facilities. Some information may be stored in other computerized media, e.g., hard disk, floppy diskettes, magnetic tape, digital recordings, Compact Discs (CDs), and/or optical disks. Documentary records are maintained in manual file folders and/or on index card files.

RETRIEVABILITY:

Records may be retrieved by identifying data including name and/or register number of inmate and/or claim number generated by the system.

SAFEGUARDS:

Manual records are stored in locked filing cabinets or in safes and can be accessed only by authorized personnel by key or combination formula. Automated equipment is kept in secured rooms and can be accessed only by authorized personnel through passwords and identification codes. All records in Bureau facilities are maintained in guarded buildings.

RETENTION AND DISPOSAL:

Records in this system are retained for a period of two (2) years after expiration of sentence. Some records may be transferred into another record system: the Inmate Central Records System, JUSTICE/BOP–005, or the Inmate Physical and Mental Health Record System, JUSTICE/BOP–007, and some records may be destroyed by shredding and/or electronic means.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Health Services Division, Federal Bureau of Prisons; 320 First Street NW., Washington, DC 20534.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

All requests for records may be made by writing to the System Manager identified above, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534. The envelope should be clearly marked ''Privacy Act Request.'' This system of records is exempted from access pursuant to 5 U.S.C. 552a(j). A determination as to the applicability of the exemption to a particular record(s) shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Records are generated by: Individuals covered by the system (inmates and former inmates); Bureau staff; hospital and/or medical sources; pre-sentence reports; other mental health care agencies' observation reports; Federal, State, local, tribal, and foreign law enforcement agencies; and Federal/State probation and judicial offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(2), (e)(3), (e)(4)(H), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register** and codified at 28 CFR 16.97(a) and (b).

[FR Doc. 02–15298 Filed 6–17–02; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 274–2002]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to modify its system of records entitled ''Federal Tort Claims Act Record System, JUSTICE/BOP–009.'' This system, as last published on September 28, 1978 (43 FR 44737), previously covered only those claims submitted to the Bureau pursuant to the Federal Tort Claims Act, 28 U.S.C. 2675 (FTCA). It is now being expanded to include administrative claims submitted to the Bureau pursuant to the Military Personnel and Civilian Employees Claims Act, 31 U.S.C. 3721 (CECA), and the Bureau of Prisons Claims Act, 31 U.S.C. 3722 (BOPCA). To reflect this change, the system is being re-titled ''Administrative Claims Record System, JUSTICE/BOP–009.'' This system, as now modified, will become effective 60 days from the date of publication in the **Federal Register**.

Other modifications to the system include updating the system's locations, description of the Categories of Records, and the purpose of the system. A number of other changes were made to update, clarify and/or improve other sections. For example, the section describing Storage has been modified to include all updated technical improvements, including digital recordings and Compact Discs (CDs). The entire Routine Use section has been re-organized and expanded. The exemptions previously promulgated at 28 CFR 16.97 (a) and (b) remain the same.

Title 5 U.S.C. 552a (e)(4) and (11) provide that the public be provided a 30-day period in which to comment. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given a 40-day period in which to review the system. Therefore, please submit any comments by July 18, 2002.

The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

A description of the modified system is provided below.

Dated: June 5, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/BOP–009

SYSTEM NAME:

Administrative Claims Record System.

SYSTEM LOCATION:

Records may be retained at the Central Office, Regional Offices, or at any of the Federal Bureau of Prisons (Bureau) facilities, or at any location

operated by a contractor authorized to provide computer and/or correctional services to Bureau inmates. A list of Bureau facilities may be found at 28 CFR part 503 and on the Internet at *http://www.bop.gov.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former inmates, including pre-trial detainees, under the custody of the Attorney General and/or the Director of the Bureau of Prisons, civilians who are claimants under the Federal Tort Claims Act (FTCA), current and former employees who are claimants under the FTCA, the Military Personnel and Civilian Employees Claims Act (CECA), and the Bureau of Prisons Claims (BOPCA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: (1) Claims and supporting documents; (2) personal data regarding the claimant, including name, register number (if an inmate or former inmate), address, social and criminal background (if applicable), and employment history; (3) investigative reports; (4) medical reports; (5) property records; (6) litigation reports, pleadings and decisions (7) correspondence; and (8) processing data, including dates of receiving and responding to the claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained under authority of the Federal Tort Claims Act, 28 U.S.C. 2671 et seq. (FTCA); the Military Personnel and Civilian Employees Claims Act, 31 U.S.C. 3721 (CECA); and the Bureau of Prisons Claims Act, 31 U.S.C. 3722 (BOPCA).

PURPOSE OF THE SYSTEM:

The purpose of this system is to process and track administrative claims submitted to the Bureau under the FTCA, the CECA, and the BOPCA. The system is maintained to assist in the processing of these claims for personal injury and/or property damages and to provide an information source for subsequent litigation concerning these claims in United States Courts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant data from this system will be disclosed as follows:

(a) To Federal, State, local, foreign and international law enforcement agencies and officials for law enforcement purposes such as civil court actions, regulatory proceedings, responding to an emergency, inmate disciplinary proceedings; or for such law enforcement needs as prison administration, investigations, and possible criminal prosecutions.

(b) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(c) To Members of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the record subject;

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(e) To the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(f) In a proceeding before a court, grand jury, or administrative or regulatory body when the records are determined by the Department of Justice to be arguably relevant to the proceeding;

(g) To a federal, state, or local licensing agency or association which requires information concerning the suitability or eligibility of an individual for a license or permit;

(h) Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility; and

(i) To any person or entity to the extent necessary to prevent an immediate loss of life or serious bodily injury.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored in electronic media via a configuration of personal computer, client/server, and mainframe systems architecture and may be accessed by those with a need-to-know at all Bureau and contractor facilities. Some information may be stored in other computerized media, e.g., hard disk, floppy diskettes, magnetic tape, digital recordings, Compact Discs (CDs), and/or optical disks. Documentary records are maintained in manual file folders and/or on index card files.

RETRIEVABILITY:

Documents are indexed by the claimant's name and/or claim number.

SAFEGUARDS:

Information is safeguarded in accordance with Bureau rules and policy governing automated information systems security and access. These safeguards include the maintenance of records and technical equipment in restricted areas and the proper use of passwords and user identification codes to access the system. Automated equipment and manual records are stored in guarded buildings and can be accessed only by authorized personnel through passwords and identification codes.

RETENTION AND DISPOSAL:

Information in this system is maintained for twelve (12) years after close of case, at which time documentary records are destroyed by shredding. Electronic records are erased after ninety (90) days unless archived into the case file.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director/General Counsel, Federal Bureau of Prisons; 320 First Street NW., Washington, DC 20534.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

All requests for records may be made by writing to the System Manager identified above, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534. The envelope should be clearly marked ''Privacy Act Request.'' This system of records is exempted from access pursuant to 5 U.S.C. 552a(j). A determination as to the applicability of the exemption to a particular record(s) shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Records are generated by: claimants; inmates; Bureau staff; Federal, State,

local, tribal, and foreign law enforcement agencies; Federal/State probation and judicial offices; Congress; contract and consulting physicians, including hospitals; and attorneys for claimants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(2), (e)(3), (e)(4)(H), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register** and codified at 28 CFR 16.97(a) and (b).

[FR Doc. 02–15299 Filed 6–17–02; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Department of Justice.

ACTION: Policy guidance document.

SUMMARY: The Department of Justice (DOJ) adopts final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (DOJ Recipient LEP Guidance). The DOJ Recipient LEP Guidance is issued pursuant to Executive Order 13166, and supplants existing guidance on the same subject originally published at 66 FR 3834 (January 16, 2001).

DATES: Effective June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, 950 Pennsylvania Avenue, NW–NYA, Washington, DC 20530. Telephone 202–307–2222; TDD: 202–307–2678.

SUPPLEMENTARY INFORMATION: Under DOJ regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* (Title VI), recipients of Federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with limited English proficiency (LEP). *See* 28 CFR 42.104(b)(2). Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), directs each Federal agency that extends assistance subject to the requirements of Title VI to publish guidance for its respective recipients clarifying that obligation. Executive Order 13166 further directs that all such guidance documents be consistent with the compliance standards and framework detailed in DOJ Policy Guidance entitled ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency.'' *See* 65 FR 50123 (August 16, 2000).

Initial guidance on DOJ recipients' obligations to take reasonable steps to ensure access by LEP persons was published on January 16, 2001. *See* 66 FR 3834. That guidance document was republished for additional public comment on January 18, 2002. *See* 67 FR 2671. Based on public comments filed in response to the January 18, 2002 republication, DOJ published revised draft guidance for public comment on April 18, 2002. *See* 67 FR 19237.

DOJ received 24 comments in response to its April 18, 2002 publication of revised draft guidance on DOJ recipients' obligations to take reasonable steps to ensure access to programs and activities by LEP persons. The comments reflected the views of individuals, organizations serving LEP populations, organizations favoring the use of the English language, language assistance service providers, and state agencies. While many comments identified areas for improvement and/or revision, the overall response to the draft DOJ Recipient LEP Guidance was favorable. Taken together, a majority of the comments described the draft guidance as incorporating ''reasonable standards'' or ''helpful provisions'' providing ''useful suggestions instead of mandatory requirements'' reflecting ''common sense'' and a ''more measured tone'' over prior LEP guidance documents.

Two of the comments urged withdrawal of the draft guidance as unsupported by law. In response, the Department notes here as it did in the draft Recipient LEP Guidance published on April 18, 2002 that the Department's commitment to implement Title VI through regulations reaching language barriers is long-standing and is unaffected by recent judicial action precluding *individuals* from bringing judicial actions seeking to enforce those agency regulations. See 67 FR at 19238–19239. This particular policy guidance clarifies existing statutory and regulatory requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.

Of the remaining 22 comments, three supported adoption of the draft guidance as published, and 19, while supportive of the guidance and the Department's leadership in this area, suggested modifications which would, in their view, either (1) clarify the application of the flexible compliance standard incorporated by the draft guidance to particular areas or situations, or (2) provide a more definitive statement of the minimal compliance standards in this area. Several areas were raised in more than one comment. In the order most often raised, those common areas of comment were (1) recipient language assistance plans, (2) use of informal interpreters, (3) written translation safe harbors, and (4) cost considerations. The comments in each of these area are summarized and discussed below.

Recipient Language Assistance Plans. A large number of comments recommended that written language assistance plans (LEP Plans) be required of all recipients. The Department is cognizant of the value of written LEP plans in documenting a recipient's compliance with its obligation to ensure meaningful access by LEP persons, and in providing a framework for the provision of reasonable and necessary language assistance to LEP persons. The Department is also aware of the related training, operational, and planning benefits most recipients would derive from the generation and maintenance of an updated written language assistance plan for use by its employees. In the large majority of cases, the benefits flowing from a written language assistance plan has caused or will likely cause recipients to develop, with varying degrees of detail, such written plans. Even small recipients with limited contact with LEP persons would likely benefit from having a plan in place to assure that, when the need arises, staff have a written plan to turn to—even if it is only how to access a telephonic or community-based interpretation service—when determining what language services to provide and how to provide them.

However, the fact that the vast majority of the Department's recipients already have or will likely develop a written LEP plan to reap its many benefits does not necessarily mean that every recipient, however small its staff, limited its resources, or focused its services, will realize the same benefits and thus must follow an identical path. Without clear evidence suggesting that the absence of written plans for every single recipient is impeding accomplishment of the goal of meaningful access, the Department elects at this juncture to strongly recommend but not require written language assistance plans. The

Department stresses in this regard that neither the absence of a requirement of written LEP plans in all cases nor the election by an individual recipient against drafting a plan obviates the underlying obligation on the part of each recipient to provide, consistent with Title VI, the Title VI regulations, and the DOJ Recipient LEP Guidance, reasonable, timely, and appropriate language assistance to the LEP populations each serves.

While the Department continues to believe that the Recipient LEP Guidance strikes the correct balance between recommendations and requirements in this area, the Department has revised the introductory paragraph of Section VII of the Recipient LEP Guidance to acknowledge a recipient's discretion in drafting a written LEP plan yet to emphasize the many benefits that weigh in favor of such a written plan in the vast majority of cases.

Informal Interpreters. As in the case of written LEP plans, a large number of the comments urged the incorporation of more definitive language strongly discouraging or severely limiting the use of informal interpreters such as family members, guardians, caretakers, friends, or fellow inmates or detainees. Some recommended that the draft guidance be revised to prohibit the use of informal interpreters except in limited or emergency situations. A common sub-theme running through many of these comments was a concern regarding the technical and ethical competency of such interpreters to ensure meaningful and appropriate access at the level and of the type contemplated under the DOJ Recipient LEP Guidance.[1]

As in the case of written LEP plans, the Department believes that the DOJ Recipient LEP Guidance provides sufficient guidance to allow recipients to strike the proper balance between the many situations where the use of informal interpreters is inappropriate, and the few situations where the transitory and/or limited use of informal interpreters is necessary and appropriate in light of the nature of a service or benefit being provided and the factual context in which that service or benefit is being provided. Nonetheless, the Department concludes that the potential for the inappropriate use of informal interpreters or, conversely, its unnecessary avoidance, can be minimized through additional clarifications in the DOJ Recipient LEP Guidance. Towards that end, the subsection titled ''Use of Family Members, Friends, Other Inmates, or Other Detainees as Interpreters' of Section VI.A. of the DOJ Recipient LEP Guidance has been revised to include guardians and caretakers among the potential class of informal interpreters, to note that beneficiaries who elect to provide their own informal interpreter do so at their own expense, to clarify that reliance on informal interpreters should not be part of any recipient LEP plan, and to expand the discussion of the special considerations that should guide a recipient's limited reliance on informal interpreters.

Safe Harbors. Several comments focused on safe harbor and vital documents provisions of the written translations section of the DOJ Recipient LEP Guidance.[2] A few comments observed that the safe harbor standard set out in the Recipient LEP Guidance was too high, potentially permitting recipients to avoid translating several critical types of vital documents (*e.g.,* notices of denials of benefits or rights, leases, rules of conduct, *etc.*). In contrast, another comment pointed to this same standard as support for the position that the safe harbor provision was too low, potentially requiring a large recipient to incur extraordinary fiscal burdens to translate all documents associated with the program or activity.

The decision as to what program-related documents should be translated into languages other than English is a difficult one. While documents generated by a recipient may be helpful in understanding a program or activity, not all are critical or vital to ensuring meaningful access by beneficiaries generally and LEP persons specifically. Some documents may create or define legally enforceable rights or responsibilities on the part of individual beneficiaries (*e.g.,* leases, rules of conduct, notices of benefit denials, *etc.*). Others, such as application or certification forms, solicit important information required to establish or maintain eligibility to participate in a Federally-assisted program or activity. And for some programs or activities, written documents may be the core benefit or service provided by the program or activity. Moreover, some programs or activities may be specifically focused on providing benefits or services to significant LEP populations. Finally, a recipient may elect to solicit vital information orally as a substitute for written documents. For example, many state unemployment insurance programs are transitioning away from paper-based application and certification forms in favor of telephone-based systems. Also, certain languages (*e.g.,* Hmong) are oral rather than written, and thus a high percentage of such LEP speakers will likely be unable to read translated documents or written instructions since it is only recently that such languages have been converted to a written form. Each of these factors should play a role in deciding what documents should be translated, what target languages other than English are appropriate, or even whether more effective alternatives to a continued reliance on written documents to obtain or process vital information exist.

As has been emphasized elsewhere, the Recipient LEP Guidance is not intended to provide a definitive answer governing the translation of written documents for all recipients applicable in all cases. Rather, in drafting the safe harbor and vital documents provisions of the Recipient LEP Guidance, the Department sought to provide one, but not necessarily the only, point of reference for when a recipient should consider translations of documents (or the implementation of alternatives to such documents) in light of its particular program or activity, the document or information in question, and the potential LEP populations served. In furtherance of this purpose, the safe harbor and vital document provisions of the Recipient LEP Guidance have been revised to clarify the elements of the flexible translation standard, and to acknowledge that distinctions can and should be made between frequently-encountered and less commonly-encountered languages when identifying languages for translation.

Costs Considerations. A number of comments focused on cost considerations as an element of the Department's flexible four-factor analysis for identifying and addressing the language assistance needs of LEP

[1] A few comments urged the Department to incorporate language detailing particular interpretation standards or approaches. The Department declines to set, as part of the DOJ Recipient LEP Guidance, professional or technical standards for interpretation applicable to all recipients in every community and in all situations. General guidelines for translator and interpreter competency are already set forth in the guidance. Technical and professional standards and necessary vocabulary and skills for court interpreters and interpreters in custodial interrogations, for instance, would be different from those for emergency service interpreters, or, in turn, those for interpreters in educational programs for correctional facilities. Thus, recipients, beneficiaries, and associations of professional interpreters and translators should collaborate in identifying the applicable professional and technical interpretation standards that are appropriate for particular situations.

[2] One comment pointed out that current demographic information based on the 2000 Census or other data was not readily available to assist recipients in identifying the number or proportion of LEP persons and the significant language groups among their otherwise eligible beneficiaries. The Department is aware of this potential difficulty and is, among other things, working with the Census Bureau, among other entities, to increase the availability of such demographic data.

persons. While none urged that costs be excluded, some comments expressed concern that a recipient could use cost as a basis for avoiding otherwise reasonable and necessary language assistance to LEP persons. In contrast, a few comments suggested that the flexible fact-dependent compliance standard incorporated by the DOJ Recipient LEP Guidance, when combined with the desire of most recipients to avoid the risk of noncompliance, could lead some large, state-wide recipients to incur unnecessary or inappropriate fiscal burdens in the face of already strained program budgets. The Department is mindful that cost considerations could be inappropriately used to avoid providing otherwise reasonable and necessary language assistance. Similarly, cost considerations could be inappropriately ignored or minimized to justify the provision of a particular level or type of language service where less costly equally effective alternatives exist. The Department also does not dismiss the possibility that the identified need for language services might be quite costly for certain types of recipients in certain communities, particularly if they have not been keeping up with the changing needs of the populations they serve over time.

The potential for possible abuse of cost considerations by some does not, in the Department's view, justify its elimination as a factor in all cases when determining the appropriate ''mix'' of reasonable language assistance services determined necessary under the DOJ Recipient LEP Guidance to ensure meaningful access by LEP persons to Federally assisted programs and activities. The Department continues to believe that costs are a legitimate consideration in identifying the reasonableness of particular language assistance measures, and that the DOJ Recipient LEP Guidance identifies the appropriate framework through which costs are to be considered.

In addition to the four larger concerns noted above, the Department has substituted, where appropriate, technical or stylistic changes that more clearly articulate, in the Department's view, the underlying principle, guideline, or recommendation detailed in the Guidance. In addition, the Guidance has been modified to expand the definition of ''courts'' to include administrative adjudications conducted by a recipient; to acknowledge that English language instruction is an important adjunct to (but not substitute for) the obligation to ensure access to Federally assisted programs and activities by all eligible persons; and to clarify the Guidance's application to activities undertaken by a recipient either voluntarily or under contract in support of a Federal agency's functions.

After appropriate revision based on a careful consideration of the comments, with particular focus on the common concerns summarized above, the Department adopts final ''Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.'' The text of this final guidance document appears below.

It has been determined that this Guidance, which supplants existing Guidance on the same subject previously published at 66 FR 3834 (January 16, 2001), does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

Dated: June 12, 2002.

R. Alexander Acosta,

Principal Deputy Assistant Attorney General, Civil Rights Division.

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or ''LEP.'' While detailed data from the 2000 census has not yet been released, 26% of all Spanish-speakers, 29.9% of all Chinese-speakers, and 28.2% of all Vietnamese-speakers reported that they spoke English ''not well'' or ''not at all'' in response to the 1990 census.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by Federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[1]

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[2] These are the same criteria DOJ will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

The Department of Justice's role under Executive Order 13166 is unique. The Order charges DOJ with responsibility for providing LEP Guidance to other Federal agencies and for ensuring consistency among each agency-specific guidance. Consistency among Departments of the Federal government is particularly important. Inconsistency or contradictory guidance could confuse recipients of Federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this

[1] DOJ recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

[2] The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

Guidance is designed to address. As with most government initiatives, this requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that Federally-assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in Federally-assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive Federal financial assistance.

There are many productive steps that the Federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in Federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, the Department plans to continue to provide assistance and guidance in this important area. In addition, DOJ plans to work with representatives of law enforcement, corrections, courts, administrative agencies, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, DOJ intends to explore how language assistance measures, resources and cost-containment approaches developed with respect to its own Federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small non-profits. An interagency working group on LEP has developed a Web site, *www.lep.gov,* to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

Many commentators have noted that some have interpreted the case of *Alexander* v. *Sandoval,* 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities. We have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that Federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall ''on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity ''to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability.'' 42 U.S.C. 2000d–1.

Department of Justice regulations promulgated pursuant to section 602 forbid recipients from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.'' 28 CFR 42.104(b)(2).

The Supreme Court, in *Lau* v. *Nichols,* 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of DOJ, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In *Lau,* a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in Federally funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. ''Improving Access to Services for Persons with Limited English Proficiency,'' 65 FR 50121 (August 16, 2000). Under that order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from ''restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program'' or from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.''

On that same day, DOJ issued a general guidance document addressed to ''Executive Agency Civil Rights Officers'' setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. ''Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency,'' 65 FR 50123 (August 16, 2000) (''DOJ LEP Guidance'').

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander* v. *Sandoval,* 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for ''Heads of Departments and Agencies, General Counsels and Civil Rights Directors.'' This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval.*[3] The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities—the Executive Order remains in force.

Pursuant to Executive Order 13166, DOJ developed its own guidance document for recipients and initially

[3] The memorandum noted that some commentators have interpreted *Sandoval* as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities. *See, e.g., Sandoval,* 532 U.S. at 286, 286 n.6 (''[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with ' Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid.''). The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal grant agencies to enforce their own implementing regulations.

issued it on January 16, 2001. ''Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,'' 66 FR 3834 (January 16, 2001) (''LEP Guidance for DOJ Recipients''). Because DOJ did not receive significant public comment on its January 16, 2001 publication, the Department republished on January 18, 2002 its existing guidance document for additional public comment. ''Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,'' 67 FR 2671 (January 18, 2002). The Department has since received substantial public comment.

This guidance document is thus published pursuant to Executive Order 13166 and supplants the January 16, 2001 publication in light of the public comment received and Assistant Attorney General Boyd's October 26, 2001 clarifying memorandum.

III. Who Is Covered?

Department of Justice regulations, 28 CFR 42.104(b)(2), require all recipients of Federal financial assistance from DOJ to provide meaningful access to LEP persons.[4] Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of DOJ assistance include, for example:

- Police and sheriffs' departments
- Departments of corrections, jails, and detention facilities, including those recipients that house detainees of the Immigration and Naturalization Service
- Courts [5]
- Certain non profit agencies with law enforcement, public safety, and victim assistance missions;
- Other entities with public safety and emergency service missions.

Subrecipients likewise are covered when Federal funds are passed through from one recipient to a subrecipient.

Coverage extends to a recipient's entire program or activity, *i.e.,* to all parts of a recipient's operations. This is true even if only one part of the recipient receives the Federal assistance.[6]

Example: DOJ provides assistance to a state department of corrections to improve a particular prison facility. All of the operations of the entire state department of corrections—not just the particular prison—are covered.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of Federally assisted services to persons with limited English proficiency.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or ''LEP,'' entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by DOJ recipients and should be considered when planning language services include, but are not limited to:

- Persons who are in the custody of the recipient, including juveniles, detainees, wards, and inmates.
- Persons subject to or serviced by law enforcement activities, including, for example, suspects, violators, witnesses, victims, those subject to immigration-related investigations by recipient law enforcement agencies, and community members seeking to participate in crime prevention or awareness activities.
- Persons who encounter the court system.
- Parents and family members of the above.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. DOJ recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons ''eligible to be served, or likely to be directly affected, by'' a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant agency as the recipient's service area. However, where, for instance, a precinct serves a large LEP population, the appropriate service area is most likely the precinct, and not the entire population served by the department. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the

[4] Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the DOJ LEP Guidance are to additionally apply to the programs and activities of Federal agencies, including the Department of Justice.

[5] As used in this guidance, the word ''court'' or ''courts'' includes administrative adjudicatory systems or administrative hearings administered or conducted by a recipient.

[6] However, if a Federal agency were to decide to terminate Federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d–1.

recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. Appendix A provides examples to assist in determining the relevant service area. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the legal system.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.[7] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligations to communicate rights to a person who is arrested or to provide medical services to an ill or injured inmate differ, for example, from those to provide bicycle safety courses or recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, State, or local entity to make an activity compulsory, such as particular educational programs in a correctional facility or the communication of Miranda rights, can serve as strong evidence of the program's importance.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, ''reasonable steps'' may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be ''fixed'' later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.[8] Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the ''mix'' of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter ''interpretation'') and written translation (hereinafter ''translation''). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For

[7] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

[8] Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

instance, a police department in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many police departments have already made such arrangements.) In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high—such as in the case of a voluntary general public tour of a courthouse—in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.,* consecutive, simultaneous, summarization, or sight translation);

Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person; [9] and understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires.

Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles (particularly in court, administrative hearings, or law enforcement contexts).

Some recipients, such as courts, may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly in the contexts of courtrooms and custodial or other police interrogations, the use of certified interpreters is strongly encouraged.[10] Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in a prison hospital emergency room, for example, must be extraordinarily high, while the quality and accuracy of language services in a bicycle safety class need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for ''timely'' applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of DOJ recipients providing law enforcement, health, and safety services, and when important legal rights are at issue, a recipient would likely not be providing meaningful access if it had one bilingual staffer available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as 911 operators, police officers, guards, or program directors, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual law clerk would probably not be able to perform effectively the role of a courtroom or administrative hearing interpreter and law clerk at the same time, even if the law clerk were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

[9] Many languages have ''regionalisms,'' or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages which do not have an appropriate direct interpretation of some courtroom or legal terms and the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

[10] For those languages in which no formal accreditation or certification currently exists, courts and law enforcement agencies should consider a formal process for establishing the credentials of the interpreter.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

Use of Family Members, Friends, Other Inmates, or Other Detainees as Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, friend, other inmate, other detainee) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member, friend, or other inmate acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children), friends, other inmates or other detainees are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (*e.g.,* sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community.[11] In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect themselves or another perpetrator in a domestic violence or other criminal matter. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For DOJ recipient programs and activities, this is particularly true in a courtroom, administrative hearing, pre- and post-trial proceedings, situations in which health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

An example of such a case is when police officers respond to a domestic violence call. In such a case, use of family members or neighbors to interpret for the alleged victim, perpetrator, or witnesses may raise serious issues of competency, confidentiality, and conflict of interest and is thus inappropriate. While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children), friends, other inmates or other detainees often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary educational tour of a courthouse offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete,

[11] For example, special circumstances of confinement may raise additional serious concerns regarding the voluntary nature, conflicts of interest, and privacy issues surrounding the use of inmates and detainees as interpreters, particularly where an important right, benefit, service, disciplinary concern, or access to personal or law enforcement information is at stake. In some situations, inmates could potentially misuse information they obtained in interpreting for other inmates. In addition to ensuring competency and accuracy of the interpretation, recipients should take these special circumstances into account when determining whether an inmate or detainee makes a knowing and voluntary choice to use another inmate or detainee as an interpreter.

and accurate interpretations or translations of information and/or testimony are critical for law enforcement, adjudicatory, or legal reasons, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Such written materials could include, for example:

- Consent and complaint forms
- Intake forms with the potential for important consequences
- Written notices of rights, denial, loss, or decreases in benefits or services, parole, and other hearings
- Notices of disciplinary action
- Notices advising LEP persons of free language assistance
- Prison rule books
- Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required
- Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document (or the information it solicits) is ''vital'' may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for bicycle safety courses should not generally be considered vital, whereas applications for drug and alcohol counseling in prison could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are ''vital'' to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of ''meaningful access.'' Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a ''safe harbor'' for recipients regarding the requirements for translation of written materials. A ''safe harbor'' means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be

provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The DOJ recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. For example, correctional facilities should, where appropriate, ensure that prison rules have been explained to LEP inmates, at orientation, for instance, prior to taking disciplinary action against them.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.[12] Competence can often be ensured by having a second, independent translator ''check'' the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ''back translation.''

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.[13] Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs. Creating or using already-created glossaries of commonly-used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may use translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (including, e.g., information or documents of DOJ recipients regarding certain law enforcement, health, and safety services and certain legal rights).

The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons (''LEP plan'') for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain DOJ recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or

[12] For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

[13] For instance, there may be languages which do not have an appropriate direct translation of some courtroom or legal terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or ''I speak cards''), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say ''I speak Spanish'' in both Spanish and English, ''I speak Vietnamese'' in both English and Vietnamese, etc. To reduce costs of compliance, the Federal government has made a set of these cards available on the Internet. The Census Bureau ''I speak card'' can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm*. When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available.
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public (or those in a recipient's custody) are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions (or having contact with those in a recipient's custody) are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to certain health, safety, or law enforcement services or activities run by DOJ recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.[14]
- Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be ''tagged'' onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.
- Including notices in local newspapers in languages other than English.
- Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.
- Presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in service area or population affected or encountered.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LEP plan and how to implement it.
- Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by DOJ through the procedures identified in the Title VI regulations. These procedures include complaint

[14] The Social Security Administration has made such signs available at http://www.ssa.gov/multilanguage/langlist1.htm. These signs could, for example, be modified for recipient use.

investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that DOJ will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, DOJ will inform the recipient in writing of this determination, including the basis for the determination. DOJ uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, DOJ must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DOJ must secure compliance through the termination of Federal assistance after the DOJ recipient has been given an opportunity for an administrative hearing and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings. DOJ engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, DOJ proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, DOJ's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, DOJ acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to Federally assisted programs and activities for LEP persons, DOJ will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, DOJ recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to Federally assisted programs and activities.

IX. Application to Specific Types of Recipients

Appendix A of this Guidance provides examples of how the meaningful access requirement of the Title VI regulations applies to law enforcement, corrections, courts, and other recipients of DOJ assistance.

A. State and Local Law Enforcement

Appendix A further explains how law enforcement recipients can apply the four factors to a range of encounters with the public. The responsibility for providing language services differs with different types of encounters.

Appendix A helps recipients identify the population they should consider when considering the types of services to provide. It then provides guidance and examples of applying the four factors. For instance, it gives examples on how to apply this guidance to:

- Receiving and responding to requests for help
- Enforcement stops short of arrest and field investigations
- Custodial interrogations
- Intake/detention Community outreach

B. Departments of Corrections

Appendix A also helps departments of corrections understand how to apply the four factors. For instance, it gives examples of LEP access in:

- Intake
- Disciplinary action
- Health and safety
- Participation in classes or other programs affecting length of sentence
- English as a Second Language (ESL) Classes
- Community corrections programs

C. Other Types of Recipients

Appendix A also applies the four factors and gives examples for other types of recipients. Those include, for example:

- Courts
- Juvenile Justice Programs
- Domestic Violence Prevention/ Treatment Programs

Appendix A—Application of LEP Guidance for DOJ Recipients to Specific Types of Recipients

While a wide range of entities receive Federal financial assistance through DOJ, most of DOJ's assistance goes to law enforcement agencies, including state and local police and sheriffs' departments, and to state departments of corrections. Sections A and B below provide examples of how these two major types of DOJ recipients might apply the four-factor analysis. Section C provides examples for other types of recipients. The examples in this Appendix are not meant to be exhaustive and may not apply in many situations.

The requirements of the Title VI regulations, as clarified by this Guidance, supplement, but do not supplant, constitutional and other statutory or regulatory provisions that may require LEP services. Thus, a proper application of the four-factor analysis and compliance with the Title VI regulations does not replace constitutional or other statutory protections mandating warnings and notices in languages other than English in the criminal justice context. Rather, this Guidance clarifies the Title VI regulatory obligation to address, in appropriate circumstances and in a reasonable manner, the language assistance needs of LEP individuals beyond those required by the Constitution or statutes and regulations other than the Title VI regulations.

A. State and Local Law Enforcement

For the vast majority of the public, exposure to law enforcement begins and ends with interactions with law enforcement personnel discharging their duties while on patrol, responding to a request for services, talking to witnesses, or conducting community outreach activities. For a much smaller number, that exposure includes a visit to a station house. And for an important but even smaller number, that visit to the station house results in one's exposure to the criminal justice, judicial, or juvenile justice systems.

The common thread running through these and other interactions between the public and law enforcement is the exchange of information. Where police and sheriffs' departments receive Federal financial assistance, these departments have an obligation to provide LEP services to LEP individuals to ensure that they have meaningful access to the system, including, for example, understanding rights and accessing police assistance. Language barriers can, for instance, prevent victims from effectively reporting crimes to the police and hinder police investigations of reported crimes. For example, failure to communicate effectively with a victim of domestic violence can result in reliance on the batterer or a minor child and failure to identify and protect against harm.

Many police and sheriffs' departments already provide language services in a wide variety of circumstances to obtain information effectively, to build trust and

relationships with the community, and to contribute to the safety of law enforcement personnel. For example, many police departments already have available printed Miranda rights in languages other than English as well as interpreters available to inform LEP persons of their rights and to interpret police interviews.[1] In areas where significant LEP populations reside, law enforcement officials already may have forms and notices in languages other than English or they may employ bilingual law enforcement officers, intake personnel, counselors, and support staff. These experiences can form a strong basis for applying the four-factor analysis and complying with the Title VI regulations.

1. General Principles

The touchstone of the four-factor analysis is reasonableness based upon the specific purposes, needs, and capabilities of the law enforcement service under review and an appreciation of the nature and particularized needs of the LEP population served. Accordingly, the analysis cannot provide a single uniform answer on how service to LEP persons must be provided in all programs or activities in all situations or whether such service need be provided at all. Knowledge of local conditions and community needs becomes critical in determining the type and level of language services needed.

Before giving specific examples, several general points should assist law enforcement in correctly applying the analysis to the wide range of services employed in their particular jurisdictions.

a. Permanent Versus Seasonal Populations

In many communities, resident populations change over time or season. For example, in some resort communities, populations swell during peak vacation periods, many times exceeding the number of permanent residents of the jurisdiction. In other communities, primarily agricultural areas, transient populations of workers will require increased law enforcement services during the relevant harvest season. This dynamic demographic ebb and flow can also dramatically change the size and nature of the LEP community likely to come into contact with law enforcement personnel. Thus, law enforcement officials may not want to limit their analysis to numbers and percentages of permanent residents. In assessing factor one—the number or proportion of LEP individuals—police departments should consider any significant but temporary changes in a jurisdiction's demographics.

Example: A rural jurisdiction has a permanent population of 30,000, 7% of which is Hispanic. Based on demographic data and on information from the contiguous school district, of that number, only 15% are estimated to be LEP individuals. Thus, the total estimated permanent LEP population is 315 or approximately 1% of the total permanent population. Under the four-factor analysis, a sheriffs' department could reasonably conclude that the small number of LEP persons makes the affirmative translation of documents and/or employment of bilingual staff unnecessary. However, during the spring and summer planting and harvest seasons, the local population swells to 40,000 due to the influx of seasonal agricultural workers. Of this transitional number, about 75% are Hispanic and about 50% of that number are LEP individuals. This information comes from the schools and a local migrant worker community group. Thus, during the harvest season, the jurisdiction's LEP population increases to over 10% of all residents. In this case, the department may want to consider whether it is required to translate vital written documents into Spanish. In addition, this increase in LEP population during those seasons makes it important for the jurisdiction to review its interpretation services to ensure meaningful access for LEP individuals.

b. Target Audiences

For most law enforcement services, the target audience is defined in geographic rather than programmatic terms. However, some services may be targeted to reach a particular audience (*e.g.*, elementary school children, elderly, residents of high crime areas, minority communities, small business owners/operators). Also, within the larger geographic area covered by a police department, certain precincts or portions of precincts may have concentrations of LEP persons. In these cases, even if the overall number or proportion of LEP individuals in the district is low, the frequency of contact may be foreseeably higher for certain areas or programs. Thus, the second factor—frequency of contact—should be considered in light of the specific program or the geographic area being served.

Example: A police department that receives funds from the DOJ Office of Justice Programs initiates a program to increase awareness and understanding of police services among elementary school age children in high crime areas of the jurisdiction. This program involves ''Officer in the Classroom'' presentations at elementary schools located in areas of high poverty. The population of the jurisdiction is estimated to include only 3% LEP individuals. However, the LEP population at the target schools is 35%, the vast majority of whom are Vietnamese speakers. In applying the four-factor analysis, the higher LEP language group populations of the target schools and the frequency of contact within the program with LEP students in those schools, not the LEP population generally, should be used in determining the nature of the LEP needs of that particular program. Further, because the Vietnamese LEP population is concentrated in one or two main areas of town, the police department should consider whether to apply the four-factor analysis to other services provided by the police department.

c. Importance of Service/Information

Given the critical role law enforcement plays in maintaining quality of life and property, traditional law enforcement and protective services rank high on the critical/non-critical continuum. However, this does not mean that information about, or provided by, each of the myriad services and activities performed by law enforcement officials must be equally available in languages other than English. While clearly important to the ultimate success of law enforcement, certain community outreach activities do not have the same direct impact on the provision of core law enforcement services as the activities of 911 lines or law enforcement officials' ability to respond to requests for assistance while on patrol, to communicate basic information to suspects, etc. Nevertheless, with the rising importance of community partnerships and community-based programming as a law enforcement technique, the need for language services with respect to these programs should be considered in applying the four-factor analysis.

d. Interpreters

Just as with other recipients, law enforcement recipients have a variety of options for providing language services. Under certain circumstances, when interpreters are required and recipients should provide competent interpreter services free of cost to the LEP person, LEP persons should be advised that they may choose either to secure the assistance of an interpreter of their own choosing, at their own expense, or a competent interpreter provided by the recipient.

If the LEP person decides to provide his or her own interpreter, the provision of this choice to the LEP person and the LEP person's election should be documented in any written record generated with respect to the LEP person. While an LEP person may sometimes look to bilingual family members or friends or other persons with whom they are comfortable for language assistance, there are many situations where an LEP person might want to rely upon recipient-supplied interpretative services. For example, such individuals may not be available when and where they are needed, or may not have the ability to interpret program-specific technical information. Alternatively, an individual may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (e.g., sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. Similarly, there may be situations where a recipient's own interests justify the provision of an interpreter regardless of whether the LEP individual also provides his or her own interpreter. For example, where precise, complete and accurate translations of information and/or testimony are critical for law enforcement, adjudicatory or legal reasons, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use their own interpreter as well.

In emergency situations that are not reasonably foreseeable, the recipient may have to temporarily rely on non-recipient-provided language services. Reliance on children is especially discouraged unless

[1] The Department's Federal Bureau of Investigation makes written versions of those rights available in several different languages. Of course, where literacy is of concern, these are most useful in assisting an interpreter in using consistent terms when providing Miranda warnings orally.

there is an extreme emergency and no preferable interpreters are available.

While all language services need to be competent, the greater the potential consequences, the greater the need to monitor interpretation services for quality. For instance, it is important that interpreters in custodial interrogations be highly competent to translate legal and other law enforcement concepts, as well as be extremely accurate in their interpretation. It may be sufficient, however, for a desk clerk who is bilingual but not skilled at interpreting to help an LEP person figure out to whom he or she needs to talk about setting up a neighborhood watch.

2. Applying the Four-Factor Analysis Along the Law Enforcement Continuum

While all police activities are important, the four-factor analysis requires some prioritizing so that language services are targeted where most needed because of the nature and importance of the particular law enforcement activity involved. In addition, because of the ''reasonableness'' standard, and frequency of contact and resources/costs factors, the obligation to provide language services increases where the importance of the activity is greater.

Under this framework, then, critical areas for language assistance could include 911 calls, custodial interrogation, and health and safety issues for persons within the control of the police. These activities should be considered the most important under the four-factor analysis. Systems for receiving and investigating complaints from the public are important. Often very important are routine patrol activities, receiving non-emergency information regarding potential crimes, and ticketing. Community outreach activities are hard to categorize, but generally they do not rise to the same level of importance as the other activities listed. However, with the importance of community partnerships and community-based programming as a law enforcement technique, the need for language services with respect to these programs should be considered in applying the four-factor analysis. Police departments have a great deal of flexibility in determining how to best address their outreach to LEP populations.

a. Receiving and Responding to Requests for Assistance

LEP persons must have meaningful access to police services when they are victims of or witnesses to alleged criminal activity. Effective reporting systems transform victims, witnesses, or bystanders into assistants in law enforcement and investigation processes. Given the critical role the public plays in reporting crimes or directing limited law enforcement resources to time-sensitive emergency or public safety situations, efforts to address the language assistance needs of LEP individuals could have a significant impact on improving responsiveness, effectiveness, and safety.

Emergency service lines for the public, or 911 lines, operated by agencies that receive Federal financial assistance must be accessible to persons who are LEP. This will mean different things to different jurisdictions. For instance, in large cities with significant LEP communities, the 911 line may have operators who are bilingual and capable of accurately interpreting in high stress situations. Smaller cities or areas with small LEP populations should still have a plan for serving callers who are LEP, but the LEP plan and implementation may involve a telephonic interpretation service that is fast enough and reliable enough to attend to the emergency situation, or include some other accommodation short of hiring bilingual operators.

Example: A large city provides bilingual operators for the most frequently encountered languages, and uses a commercial telephone interpretation service when it receives calls from LEP persons who speak other languages. Ten percent of the city's population is LEP, and sixty percent of the LEP population speaks Spanish. In addition to 911 service, the city has a 311 line for non-emergency police services. The 311 Center has Spanish speaking operators available, and uses a language bank, staffed by the city's bilingual city employees who are competent translators, for other non-English-speaking callers. The city also has a campaign to educate non-English speakers when to use 311 instead of 911. These actions constitute strong evidence of compliance.

b. Enforcement Stops Short of Arrest and Field Investigations

Field enforcement includes, for example, traffic stops, pedestrian stops, serving warrants and restraining orders, Terry stops, activities in aid of other jurisdictions or Federal agencies (e.g., fugitive arrests or INS detentions), and crowd/traffic control. Because of the diffuse nature of these activities, the reasonableness standard allows for great flexibility in providing meaningful access. Nevertheless, the ability of law enforcement agencies to discharge fully and effectively their enforcement and crime interdiction mission requires the ability to communicate instructions, commands, and notices. For example, a routine traffic stop can become a difficult situation if an officer is unable to communicate effectively the reason for the stop, the need for identification or other information, and the meaning of any written citation. Requests for consent to search are meaningless if the request is not understood. Similarly, crowd control commands will be wholly ineffective where significant numbers of people in a crowd cannot understand the meaning of law enforcement commands.

Given the wide range of possible situations in which law enforcement in the field can take place, it is impossible to equip every officer with the tools necessary to respond to every possible LEP scenario. Rather, in applying the four factors to field enforcement, the goal should be to implement measures addressing the language needs of significant LEP populations in the most likely, common, and important situations, as consistent with the recipients' resources and costs.

Example: A police department serves a jurisdiction with a significant number of LEP individuals residing in one or more precincts, and it is routinely asked to provide crowd control services at community events or demonstrations in those precincts. If it is otherwise consistent with the requirements of the four-factor analysis, the police department should assess how it will discharge its crowd control duties in a language-appropriate manner. Among the possible approaches are plans to assign bilingual officers, basic language training of all officers in common law enforcement commands, the use of devices that provide audio commands in the predictable languages, or the distribution of translated written materials for use by officers.

Field investigations include neighborhood canvassing, witness identification and interviewing, investigative or Terry stops, and similar activities designed to solicit and obtain information from the community or particular persons. Encounters with LEP individuals will often be less predictable in field investigations. However, the jurisdiction should still assess the potential for contact with LEP individuals in the course of field investigations and investigative stops, identify the LEP language group(s) most likely to be encountered, and provide, if it is consistent with the four-factor analysis, its officers with sufficient interpretation and/or translation resources to ensure that lack of English proficiency does not impede otherwise proper investigations or unduly burden LEP individuals.

Example: A police department in a moderately large city includes a precinct that serves an area which includes significant LEP populations whose native languages are Spanish, Korean, and Tagalog. Law enforcement officials could reasonably consider the adoption of a plan assigning bilingual investigative officers to the precinct and/or creating a resource list of department employees competent to interpret and ready to assist officers by phone or radio. This could be combined with developing language-appropriate written materials, such as consents to searches or statements of rights, for use by its officers where LEP individuals are literate in their languages. In certain circumstances, it may also be helpful to have telephonic interpretation service access where other options are not successful and safety and availability of phone access permit.

Example: A police department receives Federal financial assistance and serves a predominantly Hispanic neighborhood. It routinely sends officers on domestic violence calls. The police department is in a state in which English has been declared the official language. The police therefore determine that they cannot provide language services to LEP persons. Thus, when the victim of domestic violence speaks only Spanish and the perpetrator speaks English, the officers have no way to speak with the victim so they only get the perpetrator's side of the story. The failure to communicate effectively with the victim results in further abuse and failure to charge the batterer. The police department should be aware that despite the state's official English law, the Title VI regulations apply to it. Thus, the police department should provide meaningful access for LEP persons.

c. Custodial Interrogations

Custodial interrogations of unrepresented LEP individuals trigger constitutional rights that this Guidance is not designed to address. Given the importance of being able to communicate effectively under such circumstances, law enforcement recipients should ensure competent and free language services for LEP individuals in such situations. Law enforcement agencies are strongly encouraged to create a written plan on language assistance for LEP persons in this area. In addition, in formulating a plan for effectively communicating with LEP individuals, agencies should strongly consider whether qualified independent interpreters would be more appropriate during custodial interrogations than law enforcement personnel themselves.[2]

Example: A large city police department institutes an LEP plan that requires arresting officers to procure a qualified interpreter for any custodial interrogation, notification of rights, or taking of a formal statement where the suspect's legal rights could be adversely impacted. When considering whether an interpreter is qualified, the LEP plan discourages use of police officers as interpreters in interrogations except under circumstances in which the LEP individual is informed of the officer's dual role and the reliability of the interpretation is verified, such as, for example, where the officer has been trained and tested in interpreting and tape recordings are made of the entire interview. In determining whether an interpreter is qualified, the jurisdiction uses the analysis noted above. These actions would constitute strong evidence of compliance.

d. Intake/Detention

State or local law enforcement agencies that arrest LEP persons should consider the inherent communication impediments to gathering information from the LEP arrestee through an intake or booking process. Aside from the basic information, such as the LEP arrestee's name and address, law enforcement agencies should evaluate their ability to communicate with the LEP arrestee about his or her medical condition. Because medical screening questions are commonly used to elicit information on the arrestee's medical needs, suicidal inclinations, presence of contagious diseases, potential illness, resulting symptoms upon withdrawal from certain medications, or the need to segregate the arrestee from other prisoners, it is important for law enforcement agencies to consider how to communicate effectively with an LEP arrestee at this stage. In jurisdictions with few bilingual officers or in situations where the LEP person speaks a language not encountered very frequently, telephonic interpretation services may provide the most cost effective and efficient method of communication.

e. Community Outreach

Community outreach activities increasingly are recognized as important to the ultimate success of more traditional duties. Thus, an application of the four-factor analysis to community outreach activities can play an important role in ensuring that the purpose of these activities (to improve police/community relations and advance law enforcement objectives) is not thwarted due to the failure to address the language needs of LEP persons.

Example: A police department initiates a program of domestic counseling in an effort to reduce the number or intensity of domestic violence interactions. A review of domestic violence records in the city reveals that 25% of all domestic violence responses are to minority areas and 30% of those responses involve interactions with one or more LEP persons, most of whom speak the same language. After completing the four-factor analysis, the department should take reasonable steps to make the counseling accessible to LEP individuals. For instance, the department could seek bilingual counselors (for whom they provided training in translation) for some of the counseling positions. In addition, the department could have an agreement with a local university in which bilingual social work majors who are competent in interpreting, as well as language majors who are trained by the department in basic domestic violence sensitivity and counseling, are used as interpreters when the in-house bilingual staff cannot cover the need. Interpreters under such circumstances should sign a confidentiality agreement with the department. These actions constitute strong evidence of compliance.

Example: A large city has initiated an outreach program designed to address a problem of robberies of Vietnamese homes by Vietnamese gangs. One strategy is to work with community groups and banks and others to help allay traditional fears in the community of putting money and other valuables in banks. Because a large portion of the target audience is Vietnamese speaking and LEP, the department contracts with a bilingual community liaison competent in the skill of translating to help with outreach activities. This action constitutes strong evidence of compliance.

B. Departments of Corrections/Jails/ Detention Centers

Departments of corrections that receive Federal financial assistance from DOJ must provide LEP prisoners [3] with meaningful access to benefits and services within the program. In order to do so, corrections departments, like other recipients, must apply the four-factor analysis.

1. General Principles

Departments of corrections also have a wide variety of options in providing translation services appropriate to the particular situation. Bilingual staff competent in interpreting, in person or by phone, pose one option. Additionally, particular prisons may have agreements with local colleges and universities, interpreter services, and/or community organizations to provide paid or volunteer competent translators under agreements of confidentiality and impartiality. Telephonic interpretation services may offer a prudent oral interpreting option for prisons with very few and/or infrequent prisoners in a particular language group. Reliance on fellow prisoners is generally not appropriate. Reliance on fellow prisoners should only be an option in unforeseeable emergency circumstances; when the LEP inmate signs a waiver that is in his/her language and in a form designed for him/her to understand; or where the topic of communication is not sensitive, confidential, important, or technical in nature and the prisoner is competent in the skill of interpreting.

In addition, a department of corrections that receives Federal financial assistance would be ultimately responsible for ensuring that LEP inmates have meaningful access within a prison run by a private or other entity with which the department has entered into a contract. The department may provide the staff and materials necessary to provide required language services, or it may choose to require the entity with which it contracted to provide the services itself.

2. Applying the Four Factors Along the Corrections Continuum

As with law enforcement activities, critical and predictable contact with LEP individuals poses the greatest obligation for language services. Corrections facilities have somewhat greater abilities to assess the language needs of those they encounter, although inmate populations may change rapidly in some areas. Contact affecting health and safety, length of stay, and discipline likely present the most critical situations under the four-factor analysis.

a. Assessment

Each department of corrections that receives Federal financial assistance should assess the number of LEP prisoners who are in the system, in which prisons they are located, and the languages he or she speaks. Each prisoner's LEP status, and the language he or she speaks, should be placed in his or her file. Although this Guidance and Title VI are not meant to address literacy levels, agencies should be aware of literacy problems so that LEP services are provided in a way that is meaningful and useful (*e.g.,* translated written materials are of little use to a nonliterate inmate). After the initial assessment, new LEP prisoners should be identified at intake or orientation, and the data should be updated accordingly.

b. Intake/Orientation

Intake/Orientation plays a critical role not merely in the system's identification of LEP prisoners, but in providing those prisoners with fundamental information about their

[2] Some state laws prohibit police officers from serving as interpreters during custodial interrogation of suspects.

[3] In this Guidance, the terms ''prisoners'' or ''inmates'' include all of those individuals, including Immigration and Naturalization Service (INS) detainees and juveniles, who are held in a facility operated by a recipient. Certain statutory, regulatory, or constitutional mandates/rights may apply only to juveniles, such as educational rights, including those for students will disabilities or limited English proficiency. Because a decision by a recipient or a federal, state, or local entity to make an activity compulsory serves as strong evidence of the program's importance, the obligation to provide language services may differ depending upon whether the LEP person is a juvenile or an adult inmate.

obligations to comply with system regulations, participate in education and training, receive appropriate medical treatment, and enjoy recreation. Even if only one prisoner doesn't understand English, that prisoner should likely be given the opportunity to be informed of the rules, obligations, and opportunities in a manner designed effectively to communicate these matters. An appropriate analogy is the obligation to communicate effectively with deaf prisoners, which is most frequently accomplished through sign language interpreters or written materials. Not every prison will use the same method for providing language assistance. Prisons with large numbers of Spanish-speaking LEP prisoners, for example, may choose to translate written rules, notices, and other important orientation material into Spanish with oral instructions, whereas prisons with very few such inmates may choose to rely upon a telephonic interpretation service or qualified community volunteers to assist.

Example: The department of corrections in a state with a 5% Haitian Creole-speaking LEP corrections population and an 8% Spanish-speaking LEP population receives Federal financial assistance to expand one of its prisons. The department of corrections has developed an intake video in Haitian Creole and another in Spanish for all of the prisons within the department to use when orienting new prisoners who are LEP and speak one of those languages. In addition, the department provides inmates with an opportunity to ask questions and discuss intake information through either bilingual staff who are competent in interpreting and who are present at the orientation or who are patched in by phone to act as interpreters. The department also has an agreement whereby some of its prisons house a small number of INS detainees. For those detainees or other inmates who are LEP and do not speak Haitian Creole or Spanish, the department has created a list of sources for interpretation, including department staff, contract interpreters, university resources, and a telephonic interpretation service. Each person receives at least an oral explanation of the rights, rules, and opportunities. These actions constitute strong evidence of compliance. Example:

A department of corrections that receives Federal financial assistance determines that, even though the state in which it resides has a law declaring English the official language, it should still ensure that LEP prisoners understand the rules, rights, and opportunities and have meaningful access to important information and services at the state prisons. Despite the state's official English law, the Title VI regulations apply to the department of corrections.

c. Disciplinary Action

When a prisoner who is LEP is the subject of disciplinary action, the prison, where appropriate, should provide language assistance. That assistance should ensure that the LEP prisoner had adequate notice of the rule in question and is meaningfully able to understand and participate in the process afforded prisoners under those circumstances. As noted previously, fellow inmates should generally not serve as interpreters in disciplinary hearings.

d. Health and Safety

Prisons providing health services should refer to the Department of Health and Human Services' guidance [4] regarding health care providers' Title VI and Title VI regulatory obligations, as well as with this Guidance.

Health care services are obviously extremely important. How access to those services is provided depends upon the four-factor analysis. If, for instance, a prison serves a high proportion of LEP individuals who speak Spanish, then the prison health care provider should likely have available qualified bilingual medical staff or interpreters versed in medical terms. If the population of LEP individuals is low, then the prison may choose instead, for example, to rely on a local community volunteer program that provides qualified interpreters through a university. Due to the private nature of medical situations, only in unpredictable emergency situations or in non-emergency cases where the inmate has waived rights to a non-inmate interpreter would the use of other bilingual inmates be appropriate.

e. Participation Affecting Length of Sentence

If a prisoner's LEP status makes him/her unable to participate in a particular program, such a failure to participate should not be used to adversely impact the length of stay or significantly affect the conditions of imprisonment. Prisons have options in how to apply this standard. For instance, prisons could: (1) Make the program accessible to the LEP inmate; (2) identify or develop substitute or alternative, language-accessible programs, or (3) waive the requirement.

Example: State law provides that otherwise eligible prisoners may receive early release if they take and pass an alcohol counseling program. Given the importance of early release, LEP prisoners should, where appropriate, be provided access to this prerequisite in some fashion. How that access is provided depends on the three factors other than importance. If, for example, there are many LEP prisoners speaking a particular language in the prison system, the class could be provided in that language for those inmates. If there were far fewer LEP prisoners speaking a particular language, the prison might still need to ensure access to this prerequisite because of the importance of early release opportunities. Options include, for example, use of bilingual teachers, contract interpreters, or community volunteers to interpret during the class, reliance on videos or written explanations in a language the inmate understands, and/or modification of the requirements of the class to meet the LEP individual's ability to understand and communicate.

f. ESL Classes

States often mandate English-as-a-Second language (ESL) classes for LEP inmates. Nothing in this Guidance indicates how recipients should address such mandates. But recipients should not overlook the long-term positive impacts of incorporating or offering ESL programs in parallel with language assistance services as one possible strategy for ensuring meaningful access. ESL courses can serve as an important adjunct to a proper LEP plan in prisons because, as prisoners gain proficiency in English, fewer language services are needed. However, the fact that ESL classes are made available does not obviate the need to provide meaningful access for prisoners who are not yet English proficient.

g. Community Corrections

This guidance also applies to community corrections programs that receive, directly or indirectly, Federal financial assistance. For them, the most frequent contact with LEP individuals will be with an offender, a victim, or the family members of either, but may also include witnesses and community members in the area in which a crime was committed.

As with other recipient activities, community corrections programs should apply the four factors and determine areas where language services are most needed and reasonable. Important oral communications include, for example: interviews; explaining conditions of probations/release; developing case plans; setting up referrals for services; regular supervision contacts; outlining violations of probations/parole and recommendations; and making adjustments to the case plan. Competent oral language services for LEP persons are important for each of these types of communication. Recipients have great flexibility in determining how to provide those services.

Just as with all language services, it is important that language services be competent. Some knowledge of the legal system may be necessary in certain circumstances. For example, special attention should be given to the technical interpretation skills of interpreters used when obtaining information from an offender during pre-sentence and violation of probation/parole investigations or in other circumstances in which legal terms and the results of inaccuracies could impose an enormous burden on the LEP person.

In addition, just as with other recipients, corrections programs should identify vital written materials for probation and parole that should be translated when a significant number or proportion of LEP individuals that speak a particular language is encountered. Vital documents in this context could include, for instance: probation/parole department descriptions and grievance procedures, offender rights information, the pre-sentence/release investigation report, notices of alleged violations, sentencing/release orders, including conditions of parole, and victim impact statement questionnaires.

C. Other Types of Recipients

DOJ provides Federal financial assistance to many other types of entities and programs, including, for example, courts, juvenile justice programs, shelters for victims of domestic violence, and domestic violence prevention programs. The Title VI regulations and this Guidance apply to those

[4] A copy of that guidance can be found on the HHS Web site at *http://www.hhs.gov/ocr/lep.* and at *http://www.usdoj.gov/crt/cor.*

entities. Examples involving some of those recipients follow: [5]

1. Courts

Application of the four-factor analysis requires recipient courts to ensure that LEP parties and witnesses receive competent language services, consistent with the four-factor analysis. At a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present. When a recipient court appoints an attorney to represent an LEP defendant, the court should ensure that either the attorney is proficient in the LEP person's language or that a competent interpreter is provided during consultations between the attorney and the LEP person.

Many states have created or adopted certification procedures for court interpreters. This is one way for recipients to ensure competency of interpreters. Where certification is available, courts should consider carefully the qualifications of interpreters who are not certified. Courts will not, however, always be able to find a certified interpreter, particularly for less frequently encountered languages. In a courtroom or administrative hearing setting, the use of informal interpreters, such as family members, friends, and caretakers, would not be appropriate.

Example: A state court receiving DOJ Federal financial assistance has frequent contact with LEP individuals as parties and witnesses, but has experienced a shortage in certified interpreters in the range of languages encountered. State court officials work with training and testing consultants to broaden the number of certified interpreters available in the top several languages spoken by LEP individuals in the state. Because resources are scarce and the development of tests expensive, state court officials decide to partner with other states that have already established agreements to share proficiency tests and to develop new ones together. The state court officials also look to other existing state plans for examples of: codes of professional conduct for interpreters; mandatory orientation and basic training for interpreters; interpreter proficiency tests in Spanish and Vietnamese language interpretation; a written test in English for interpreters in all languages covering professional responsibility, basic legal term definitions, court procedures, etc. They are considering working with other states to expand testing certification programs in coming years to include several other most frequently encountered languages. These actions constitute strong evidence of compliance.

Many individuals, while able to communicate in English to some extent, are still LEP insofar as ability to understand the terms and precise language of the courtroom. Courts should consider carefully whether a person will be able to understand and communicate effectively in the stressful role of a witness or party and in situations where knowledge of language subtleties and/or technical terms and concepts are involved or where key determinations are made based on credibility.

Example: Judges in a county court receiving Federal financial assistance have adopted a voir dire for determining a witness' need for an interpreter. The voir dire avoids questions that could be answered with ''yes'' or ''no.'' It includes questions about comfort level in English, and questions that require active responses, such as: ''How did you come to court today?'' etc. The judges also ask the witness more complicated conceptual questions to determine the extent of the person's proficiency in English. These actions constitute strong evidence of compliance.

Example: A court encounters a domestic violence victim who is LEP. Even though the court is located in a state where English has been declared the official language, it employs a competent interpreter to ensure meaningful access. Despite the state's official English law, the Title VI regulations apply to the court.

When courts experience low numbers or proportions of LEP individuals from a particular language group and infrequent contact with that language group, creation of a new certification test for interpreters may be overly burdensome. In such cases, other methods should be used to determine the competency of interpreters for the court's purposes.

Example: A witness in a county court in a large city speaks Urdu and not English. The jurisdiction has no court interpreter certification testing for Urdu language interpreters because very few LEP individuals encountered speak Urdu and there is no such test available through other states or organizations. However, a non-certified interpreter is available and has been given the standard English-language test on court processes and interpreter ethics. The judge brings in a second, independent, bilingual Urdu-speaking person from a local university, and asks the prospective interpreter to interpret the judge's conversation with the second individual. The judge then asks the second Urdu speaker a series of questions designed to determine whether the interpreter accurately interpreted their conversation. Given the infrequent contact, the low number and proportion of Urdu LEP individuals in the area, and the high cost of providing certification tests for Urdu interpreters, this ''second check'' solution may be one appropriate way of ensuring meaningful access to the LEP individual.

Example: In order to minimize the necessity of the type of intense judicial intervention on the issue of quality noted in the previous example, the court administrators in a jurisdiction, working closely with interpreter and translator associations, the bar, judges, and community groups, have developed and disseminated a stringent set of qualifications for court interpreters. The state has adopted a certification test in several languages. A questionnaire and qualifications process helps identify qualified interpreters even when certified interpreters are not available to meet a particular language need. Thus, the court administrators create a pool from which judges and attorneys can choose. A team of court personnel, judges, interpreters, and others have developed a recommended interpreter oath and a set of frequently asked questions and answers regarding court interpreting that have been provided to judges and clerks. The frequently asked questions include information regarding the use of team interpreters, breaks, the types of interpreting (consecutive, simultaneous, summary, and sight translations) and the professional standards for use of each one, and suggested questions for determining whether an LEP witness is effectively able to communicate through the interpreter. Information sessions on the use of interpreters are provided for judges and clerks. These actions constitute strong evidence of compliance.

Another key to successful use of interpreters in the courtroom is to ensure that everyone in the process understands the role of the interpreter.

Example: Judges in a recipient court administer a standard oath to each interpreter and make a statement to the jury that the role of the interpreter is to interpret, verbatim, the questions posed to the witness and the witness' response. The jury should focus on the words, not the non-verbals, of the interpreter. The judges also clarify the role of the interpreter to the witness and the attorneys. These actions constitute strong evidence of compliance.

Just as corrections recipients should take care to ensure that eligible LEP individuals have the opportunity to reduce the term of their sentence to the same extent that non-LEP individuals do, courts should ensure that LEP persons have access to programs that would give them the equal opportunity to avoid serving a sentence at all.

Example: An LEP defendant should be given the same access to alternatives to sentencing, such as anger management, batterers' treatment and intervention, and alcohol abuse counseling, as is given to non-LEP persons in the same circumstances.

Courts have significant contact with the public outside of the courtroom. Providing meaningful access to the legal process for LEP individuals might require more than just providing interpreters in the courtroom. Recipient courts should assess the need for language services all along the process, particularly in areas with high numbers of unrepresented individuals, such as family, landlord-tenant, traffic, and small claims courts.

Example: Only twenty thousand people live in a rural county. The county superior court receives DOJ funds but does not have a budget comparable to that of a more-populous urbanized county in the state. Over 1000 LEP Hispanic immigrants have settled in the rural county. The urbanized county also has more than 1000 LEP Hispanic immigrants. Both counties have ''how to'' materials in English helping unrepresented individuals negotiate the family court processes and providing information for

[5] As used in this appendix, the word ''court'' or ''courts'' includes administrative adjudicatory systems or administrative hearings administered or conducted by a recipient.

victims of domestic violence. The urban county has taken the lead in developing Spanish-language translations of materials that would explain the process. The rural county modifies these slightly with the assistance of family law and domestic violence advocates serving the Hispanic community, and thereby benefits from the work of the urban county. Creative solutions, such as sharing resources across jurisdictions and working with local bar associations and community groups, can help overcome serious financial concerns in areas with few resources.

There may be some instances in which the four-factor analysis of a particular portion of a recipient's program leads to the conclusion that language services are not currently required. For instance, the four-factor analysis may not necessarily require that a purely voluntary tour of a ceremonial courtroom be given in languages other than English by courtroom personnel, because the relative importance may not warrant such services given an application of the other factors. However, a court may decide to provide such tours in languages other than English given the demographics and the interest in the court. Because the analysis is fact-dependent, the same conclusion may not be appropriate with respect to all tours.

Just as with police departments, courts and/or particular divisions within courts may have more contact with LEP individuals than an assessment of the general population would indicate. Recipients should consider that higher contact level when determining the number or proportion of LEP individuals in the contact population and the frequency of such contact.

Example: A county has very few residents who are LEP. However, many Vietnamese-speaking LEP motorists go through a major freeway running through the county that connects two areas with high populations of Vietnamese speaking LEP individuals. As a result, the Traffic Division of the county court processes a large number of LEP persons, but it has taken no steps to train staff or provide forms or other language access in that Division because of the small number of LEP individuals in the county. The Division should assess the number and proportion of LEP individuals processed by the Division and the frequency of such contact. With those numbers high, the Traffic Division may find that it needs to provide key forms or instructions in Vietnamese. It may also find, from talking with community groups, that many older Vietnamese LEP individuals do not read Vietnamese well, and that it should provide oral language services as well. The court may already have Vietnamese-speaking staff competent in interpreting in a different section of the court; it may decide to hire a Vietnamese-speaking employee who is competent in the skill of interpreting; or it may decide that a telephonic interpretation service suffices.

2. Juvenile Justice Programs

DOJ provides funds to many juvenile justice programs to which this Guidance applies. Recipients should consider LEP parents when minor children encounter the legal system. Absent an emergency, recipients are strongly discouraged from using children as interpreters for LEP parents.

Example: A county coordinator for an anti-gang program operated by a DOJ recipient has noticed that increasing numbers of gangs have formed comprised primarily of LEP individuals speaking a particular foreign language. The coordinator may choose to assess the number of LEP youths at risk of involvement in these gangs, so that she can determine whether the program should hire a counselor who is bilingual in the particular language and English, or provide other types of language services to the LEP youths.

When applying the four factors, recipients encountering juveniles should take into account that certain programs or activities may be even more critical and difficult to access for juveniles than they would be for adults. For instance, although an adult detainee may need some language services to access family members, a juvenile being detained on immigration-related charges who is held by a recipient may need more language services in order to have access to his or her parents.

3. Domestic Violence Prevention/Treatment Programs

Several domestic violence prevention and treatment programs receive DOJ financial assistance and thus must apply this Guidance to their programs and activities. As with all other recipients, the mix of services needed should be determined after conducting the four-factor analysis. For instance, a shelter for victims of domestic violence serving a largely Hispanic area in which many people are LEP should strongly consider accessing qualified bilingual counselors, staff, and volunteers, whereas a shelter that has experienced almost no encounters with LEP persons and serves an area with very few LEP persons may only reasonably need access to a telephonic interpretation service. Experience, program modifications, and demographic changes may require modifications to the mix over time.

Example: A shelter for victims of domestic violence is operated by a recipient of DOJ funds and located in an area where 15 percent of the women in the service area speak Spanish and are LEP. Seven percent of the women in the service area speak various Chinese dialects and are LEP. The shelter uses competent community volunteers to help translate vital outreach materials into Chinese (which is one written language despite many dialects) and Spanish. The shelter hotline has a menu providing key information, such as location, in English, Spanish, and two of the most common Chinese dialects. Calls for immediate assistance are handled by the bilingual staff. The shelter has one counselor and several volunteers fluent in Spanish and English. Some volunteers are fluent in different Chinese dialects and in English. The shelter works with community groups to access interpreters in the several Chinese dialects that they encounter. Shelter staff train the community volunteers in the sensitivities of domestic violence intake and counseling. Volunteers sign confidentiality agreements. The shelter is looking for a grant to increase its language capabilities despite its tiny budget. These actions constitute strong evidence of compliance.

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Computer Associates International, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Computer Associates International, Inc. and Platinum technology International, inc.,* Civil Action No. 1:01CV02062 (GK). On September 28, 2001, the United States filed a Complaint alleging that the Defendants' conduct surrounding the acquisition of Platinum *technology* International, *inc.* by Computer Associates International, Inc. (CA) violated Section 1 of the Sherman Act (15 U.S.C. 1) and section 7a of the Clayton Act (15 U.S.C. 18(a)), commonly known as the Hart-Scott-Rodino (''HSR'') Act. The Complaint alleges that the Defendants violated Section 1 of the Sherman Act by entering into an agreement that restricted Platinum's ability to offer price discounts to customers during the time period before they consummated their merger. The proposed Final Judgment enjoins CA and future merger partners from engaging in similar conduct. The proposed Final Judgment also requires that the Defendants pay a civil penalty to resolve the HSR Act violation. The civil penalty component of the proposed Final Judgment is not open to public comment. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC, in Room 200, 325 Seventh Street, NW., on the Department of Justice Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments

should be directed to Renata B. Hesse, Chief, Networks & Technology Section, Antitrust Division, U.S. Department of Justice, 600 E Street, NW., Suite 9500, Washington, DC 20530 (telephone (202) 307–6200).

Dorothy B. Fountain,

Deputy Director of Operations.

United States District Court for the District of Columbia

[Civil No. 01–02062 (GK)]

United States of America, Plaintiff, v. Computer Associates International, Inc. and Platinum *Technology* International, *Inc.*, Defendants

Stipulation and Order

It is hereby stipulated by and between the undersigned parties, through their respective counsel, as follows:

1. The Court has jurisdiction over the subject matter of plaintiff's Complaint alleging defendants Computer Associates International, Inc. (''CA'') and Platinum *technology* International, *inc.* (''Platinum'') violated section 1 of the Sherman Act (15 U.S.C. 1) and Section 7A of the Clayton Act (15 U.S.C. 18(a)), and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia. The defendants authorize Richard L. Rosen, Esq. of Arnold & Porter to accept service of all process in this matter on their behalf.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. CA shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. The Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event that Plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event that the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. The parties' execution of this Stipulation and entry of the Final Judgment settles, discharges, and releases any and all claims of the plaintiff for civil penalties against:

(a) Defendant CA, its directors, officers, employees, and agents, for failure to comply with the waiting period requirements of § 7A of the Clayton Act, 15 U.S.C. 18(a), arising from the acquisition of Platinum by CA; and

(b) Defendant Platinum, its directors, officers, employees and agents, for failure to comply with the waiting period requirements of § 7A of the Clayton Act, 15 U.S.C. 18(a), arising from the acquisition of Platinum by CA.

Respectfully submitted,

For Plaintiff, United States of America.

James J. Tierney (D.C. Bar No. 434610), *U.S. Department of Justice, Antitrust Division, Networks & Technology Section, 600 E Street, NW., Suite 9500, Washington, DC 20530, Tel: (202) 307–0797, Fax: (202) 616–8544.*

Dated: April 23, 2002.

For Defendants, Computer Associates International, Inc. and Platinum *Technology* International, *Inc.*

Richard L. Rosen (D.C. Bar No. 307231), *Arnold & Porter, 555 Twelfth Street, NW., Washington, DC 20004–1206, Tel: (202) 942–5499, Fax: (202) 942–5999.*

Order

The Court having considered the parties' Joint Motion for Entry of Stipulation and Order, and upon consent of the parties,

It is hereby ordered that defendants shall abide by and comply with all terms and provisions of the proposed Final Judgment pending compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Dated:

United States District Court Judge

Parties Entitled to Notice of Entry of Order

Counsel for the United States

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James J. Tierney, Esq.
U.S. Department of Justice, Antitrust Division, Networks & Technology Section, 600 E Street, N.W., Suite 9500, Washington, D.C. 20530, Tel: (202) 307–0797, Fax: (202) 616–8544

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United States District Court for the District of Columbia

United States of America, Plaintiff, v. Computer Associates International, Inc.; and Platinum *Technology* International, *Inc.*, Defendants

Final Judgment

Whereas, Plaintiff United States of America filed its Complaint on September 28, 2001, alleging that Defendants Computer Associates International, Inc. (''CA'') and Platinum *technology* International, *inc.* (''Platinum'') violated Section 1 of the Sherman Act (15 U.S.C. 1), and Section 7A of the Clayton Act (15 U.S.C. 18(a)), commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the ''HSR Act''), and Plaintiff and Defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against, or any admission by, any party regarding any such issue of fact or law;

And whereas Defendant CA agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states claims upon which relief may be granted against Defendants under Section 1 of the Sherman Act (15 U.S.C. 1), and section 7A of the Clayton Act (15 U.S.C. 18a).

II. Definitions

As used in this Final Judgment:

(A) ''Agreement'' means any agreement, understanding or plan, formal or informal, written or unwritten.

(B) ''Bid'' means any bid, offer, or proposal, formal or informal, written or unwritten, to sell, lease, license, or otherwise supply any product or service, including, but not limited to, any such bid, offer, or proposal to renew, extend or otherwise revise any existing contract to provide any product or service.

(C) ''Bid information'' means all information relating to any bid, including the names of prospective customers and the prices, terms or other conditions of sale.

(D) ''CA'' means Defendant Computer Associates International, Inc., and its parents, subsidiaries (including Platinum *technology* International, *inc.*), successors and assigns, directors, officers, managers, agents, and employees, and any other person acting for, on behalf of, or under the control of them.

(E) ''Person'' or ''party'' means any individual, partnership, firm, corporation, association, or other legal or business entity.

(F) ''Pre-consummation period'' means the period of time between the signing of an agreement to acquire, directly or indirectly, any voting securities or assets of another person, and the earlier of the expiration or termination of the waiting period under the HSR Act or the closing of the acquisition transaction.

III. Applicability

This Final Judgment applies to CA, including each of its directors, officers, managers, agents, employees, parents, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who have received actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

CA is enjoined, directly or indirectly, from entering into, maintaining or enforcing any agreement with an acquiring or to-be-acquired person that, during the pre-consummation period:

(A) establishes any price or discount for any product or service of the other party to be purchased, used or re-sold in the United States.

(B) grants to one party to the transaction the right to negotiate, approve or reject any bid or customer contract for any product or service of the other party to be purchased, used or re-sold in the United States; and

(C) requires a party to provide bid information to the other party for any product or service to be purchased, used or re-sold in the United States.

V. Permitted Conduct

Nothing in Section IV shall prohibit CA and another party to a contemplated or proposed acquisition from:

(A) Agreeing that the to-be acquired person during the pre-consummation period shall continue to operate in the ordinary course of business consistent with past practices;

(B) conditioning the transaction on a requirement that the to-be acquired person during the pre-consummation period not engage in conduct that would cause a material adverse change in the business;

(C) agreeing that the to-be acquired person during the pre-consummation period shall not offer or enter into any contract that grants any person enhanced rights or refunds upon the change of control of the to-be acquired person:

(D) agreeing that either party may conduct reasonable and customary due diligence prior to closing the transaction, and conducting such due diligence. However, if CA and the other party are competitors for any service or product that is the subject of any pending bids, a party may obtain pending bid information of the other party for purposes of due diligence only to the extent that bids are material to the understanding of the future earnings and prospects of the other party and only pursuant to a non-disclosure agreement. This non-disclosure agreement must limit use of the information to conducting due diligence and must also prohibit disclosure of any such information to any employee of the party receiving the information who is directly involved in the marketing, pricing or sales of any product or service that is the subject of the pending bids;

(E) submitting a joint bid to a customer where the joint bid would be lawful in the absence of the planned acquisition; and

(F) entering into an agreement where CA and the other party to the transaction are or would be in a buyer/seller relationship and the agreement would be lawful in the absence of the planned acquisition.

VI. Compliance

(A) CA shall maintain an antitrust compliance program which shall include designating, within thirty (30) days of entry of this order, an Antitrust Compliance Officer with responsibility for achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of current and proposed activities to ensure compliance with this Final Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

(1) distributing within forty-five (45) days of entry of this Final Judgment, a copy of this Final Judgment to each current officer an director, and each employee, agent or other person who has responsibility for or authority over mergers and acquisitions.

(2) distributing in a timely manner a copy of this Final Judgment to any officer, director, employee or agent who succeeds to a position described in Section VI(A)(1);

(3) obtaining within forty-five (45) days from the entry of this Final judgment, and annually thereafter, and retaining for the duration of this Final Judgment, a written certification from each person designated in Sections VI(A)(1) & (2) that he or she: (a) Has received, read, understands, and agrees to abide by the terms of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment; and

(4) providing a copy of this Final Judgment to each merger partner before the initial exchange of a letter of intent, definitive agreement or other agreement of merger.

(B) Within sixty (60) days of entry of this Final Judgment, CA shall certify to Plaintiff that it has (1) designated an Antitrust Compliance Officer, specifying his or her name, business address and telephone number; and (2) distributed the Final Judgment in accordance with Section VI(A)(1).

(C) For the term of this Final Judgment, on or before its anniversary date, CA shall file with Plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections IV and VI.

(D) If any CA director or officer or the Antitrust Compliance Officer learns of any violation of this Final Judgment, CA shall within three (3) business days take appropriate action to terminate or modify the activity so as to assure compliance with this Final Judgment, and shall notify the Plaintiff of any such violation within ten (10) business days.

VII. Plaintiffs Access and Inspection

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the United States Department of Justice shall, upon

written request of a duly authorized representatives of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to CA, be permitted:

(1) Access during CA's office hours to inspect and copy or at Plaintiff's option, to require CA to provide copies of all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, CA's directors, officers, employees, agents or other persons, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by CA.

(B) Upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, CA shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this section shall be divulged by the Plaintiff to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

(D) If, at the time information or documents are furnished by CA to Plaintiff, CA represents and identifies in writing the material in any such information or documented to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and CA marks each pertinent page of such material, Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Procedure,'' then the United States shall give ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which CA is not a party.

VIII. Civil Penalty

Judgment is hereby entered in this matter in favor of Plaintiff, United States of America, and against Defendants, CA and Platinum, and, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104–134, Sec. 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461), and Federal Trade Commission Rule 1.98, 16 CFR 1.98.61 FR 54549 (Oct. 21, 1996), Defendants are hereby ordered jointly and severally to pay a civil penalty in the amount of six hundred and thirty eight thousand United States dollars (US $638,000). Payment shall be made by wire transfer of funds to the United States Treasury through the Treasury Financial Communications System or by cashier's check made payable to the Treasury of the United States and delivered to Chief, FOIA Unit, Antitrust Division, Department of Justice, Liberty Place, 325 7th Street, NW., Suite 200, Washington, DC 20530. Defendants shall pay the full amount of the civil penalties within thirty (30) days of the entry of this Final Judgment.

In the event of a default in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of the default to the date of payment. The portion of the Final Judgment requiring the payment of civil penalties for violation of section 7A of the Clayton Act is not subject to the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h)).

IX. Retention of Jurisdiction

This court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

X. Expiration of Final Judgment

Unless extended by this Court, this Final Judgment shall expire ten years from the date of its entry.

XI. Costs

Each party shall bear its own costs of this action.

XII. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to the Antitrust Procedures and Penalties Act, 15 United States 16.

_____

United States District Judge

Parties Entitled to Notice of Entry of Order

Counsel for the United States

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James J. Tierney, Esq.,
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United States District Court for the District of Columbia

[Civil No. 01–02062 (GK)]

United States of America, Plaintiff, v. Computer Associates International, Inc.; and Platinum *Technology* International, *inc.*, Defendants

Competitive Impact Statement

The United States, pursuant to the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement to set forth the information necessary to enable the Court and the public to evaluate the proposed Final Judgment that would resolve the allegations in the civil antitrust suit filed by the United States on September 28, 2001.

I. Nature and Purpose of This Proceeding

The United States filed a two-count Complaint against Computer Associates International, Inc. (''CA'') and Platinum *technology* International, *inc.* (''Platinum'') related to the Defendants' conduct surrounding CA's $3.5 billion acquisition of Platinum. Count One alleges that the Defendants entered into an agreement that illegally restrained trade in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. Prior to their merger, CA and Platinum aggressively competed in numerous software markets. The Complaint alleges that, under the Merger Agreement, Platinum could not, without CA's prior written approval, offer customers discounts greater than 20% off list prices. During the time between the signing of the Merger Agreement and the closing of the merger (the ''pre-consummation period''), Platinum's sales representatives were required to submit pre-approval forms to CA which contained competitively sensitive information about Platinum's customers and its prospective bids for new business. The pre-approval forms were sent to a CA Divisional Vice President located at Platinum's Illinois headquarters where he exercised the authority to approve or reject proposed Platinum customer contracts seeking discounts greater than 20% off list prices. The agreement to limit discounts and the Defendants' actions to effectuate their agreement chilled Platinum's ability to compete against CA and had the effect of denying Platinum's and

CA's customers the benefits of free and open competition. The Complaint asks the Court to declare the agreement to be unlawful and seeks an injunction to prevent CA from entering into similar agreements in the future.

In Count Two, the United States alleges that the Defendants violated Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (''HSR Act''), 15 U.S.C. 18a, which requires merging parties in certain instances to file pre-acquisition Notification and Report Forms with the Department of Justice (''DOJ'') and Federal Trade Commission (''FTC'') and observe a mandatory waiting period before acquiring any voting securities or assets of to the to-be-acquired person. The fundamental purpose of the HSR waiting period is to prevent the merging parties from combining during the pendency of an antitrust review, thereby ensuring that they remain separate and independent actors. The Defendants' Merger Agreement and pre-consummation conduct altered their status as separate and independent economic actors by transferring to CA control of substantial aspects of Platinum's business. In addition to discounts, CA exercised approval authority over other terms and conditions of Platinum's customer contracts and over Platinum's ability to offer consulting services at a fixed price and year 2000 (''Y2K'') remediation consulting services. Further exercising its control over Platinum during the pre-consummation period, CA obtained competitively sensitive bid information and made decisions about Platinum's recognition of revenue and participation at industry trade shows. The Complaint seeks a civil penalty for violation of the HSR Act.

After this suit was filed, the United States and Defendants reached a proposed settlement that eliminates the need for a trial in this case. The proposed Final Judgment remedies the Section 1 violation by prohibiting CA in future acquisitions from agreeing on prices, approving customer contracts, and misusing competitively sensitive bid information. CA and Platinum would also agree to pay a $638,000 civil penalty to resolve the HSR Act violation.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States first withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify or enforce the provisions of the proposed Final Judgment and to punish violations thereof. Entry of judgment would not constitute evidence against, or an admission by, any party with respect to any issue of fact or law involved in the case and is conditioned upon the Court's finding that entry is in the public interest.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

A. Background

1. The Defendants and the Merger Investigation

CA is a Delaware corporation with its principal place of business in Islandia, New York. CA develops, markets, and supports software products for a variety of computers and operating systems, including systems management software for computers that use IBM's OS/390, VSE and VM operating systems (''mainframe computers''). Systems management software products are used to help manage, control, or enhance the performance of mainframe computers. CA, in its 1998 fiscal year, reported revenues in excess of $4.7 billion.

Platinum was a Delaware corporation with its principal place of business in Oakbrook Terrace, Illinois. Platinum, like CA, was a leading vendor of mainframe systems management software products. In addition to its software business, Platinum offered computer consulting services, including Y2K remediation services. In its fiscal year 1998, Platinum reported revenues of about $968 million.

Prior to March 1999, Platinum aggressively competed with CA in the development and sale of numerous software products, including mainframe systems management software products. On March 29, 1999, CA and Platinum announced the Merger Agreement, pursuant to which CA would purchase all issued and outstanding shares of Platinum through a $3.5 billion cash tender offer. Thereafter, CA and Platinum filed the pre-acquisition Notification and Report Forms required by the HSR Act.

After reviewing the parties' HSR filings, DOJ opened an investigation that led to the filing of a Complaint on May 25, 1999, alleging that CA's proposed acquisition of Platinum would eliminate substantial competition and result in higher prices in certain mainframe systems management software markets. *See United States* versus *Computer Associates International Inc., et al.* (D.D.C. 99–01318 (GK)). Simultaneously with the filing of the Complaint, the parties reached an agreement that allowed CA and Platinum to go forward with the merger, provided that CA sell certain Platinum mainframe systems management software products and related assets. The HSR waiting period expired on May 25, 1999. Three days later, CA announced that it had accepted for payment all validly tendered Platinum shares and the Defendants thereafter consummated the merger. Platinum survived the merger and is now a wholly-owned subsidiary of CA.

2. CA and Platinum Agreed That CA Would Approve Certain Platinum Customer Contracts

Section 5.1 of CA's Merger Agreement with Platinum, titled ''Conduct of Business,'' sets forth numerous covenants made by Platinum as part of the agreement to be acquired regarding how it would conduct its business during the pre-consummation period. One provision, commonly found in merger agreements, required Platinum to carry on its business ''in the ordinary course in substantially the same manner as heretofore conducted.'' The Merger Agreement, however, also contained provisions not normally found in merger agreements that severely restricted Platinum's ability to engage in business as a competitive entity independent of CA's control. Section 5.1(j) prohibited Platinum, without the prior written approval of CA, from:

> enter[ing] into any agreement pursuant to which [Platinum] will provide services for a term of more than 30 days at a fixed or capped price; . . . enter[ing] into any customer sale or license agreement with non-standards terms or at discounts from list prices in excess of 20%; . . . [and] enter[ing] into or amend[ing] any contract to provide for ''*year 2000*'' remediation services.

CA retained the right to be the ''sole arbiter'' of whether to grant exceptions to these conduct of business restrictions. In its May 14, 1999, SEC 10–Q filing, Platinum conceded that the Merger Agreement placed Platinum substantially under CA's operational control, stating:

> Also, the merger agreement imposes extremely tight restrictions on [Platinum's] ability to take various actions and to conduct its business without Computer Associates' consent. These restrictions could have a severe detrimental effect on [Platinum's] business.

Platinum 10–Q (5/14/99). CA further entered into consulting and non-compete agreements with Platinum's Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer that included provisions providing that each may be held personally liable if Platinum failed to comply with the

competitive restrictions of Section 5.1(j) of the Merger Agreement.

Platinum changed its ordinary customer contract approval procedures to ensure that the company operated in accordance with the limitation imposed by Section 5.1(j) of the Merger Agreement and that any exceptions were approved by CA. Under the new procedures, Platinum sales representatives were required to complete contract pre-approval forms. The forms identified the customer, the products or services offered, list price, discount, and a justification for the discount. Platinum sales representatives were required to attach supporting documents such as the proposed contract or statement of work. The forms also contained a section for CA to note its approval.

For proposed contracts that did not conform to the business restrictions imposed by Section 5.1(j) of the Merger Agreement (for example, a contract proposing a discount greater than 20%), the Platinum sales representatives were required to submit the pre-approval forms and supporting documents to a contract review and approval team located at Platinum's Illinois headquarters. The team was composed of two Platinum employees and a CA Division Vice President. The CA Vice President had final authority to approve or reject the contract or request additional information from the Platinum sales force. On several occasions, the CA Vice President consulted with other CA executives before approving or rejecting a proposed contract. CA exercised control over Platinum's customer contract process through this approval authority. Platinum maintained a database to track contracts in the pre-approval process which contained competitively sensitive information relating to customer-specific proposals and noted whether CA had approved or rejected the contract. CA had access to this database.

3. CA Exercised Operational Control Over Platinum's Ability to Price Its Products and Services and Set Other Terms and Conditions of Sale

CA, during the HSR waiting period, took operational control over Platinum's ability to price its products and services, set other terms and conditions of sale, enter into fixed-price contracts over 30 days, and offer Y2K remediation services.

Discounts: Before the merger announcement, Platinum routinely gave software discounts over 20%, and discounts up to 80% were not uncommon. Platinum also commonly discounted consulting services more than 20%. After implementation of the new discounting restrictions and contract approval procedures, some Platinum sales representatives modified their normal discounting practices and kept discounts below the levels on which CA and Platinum had agreed, including bids where the sales representative would have otherwise recommended, and Platinum would likely have approved, discounts above the agreed-upon levels. Other Platinum sales representatives submitted, under the newly established process, proposed contracts seeking discounts greater than 20%. However, these requests were subject to review and approval by CA. In some cases, where CA found the justification given to support an exception was insufficient, CA requested further explanation or required the offer to be modified before granting approval.

Other Contract Terms: Prior to the merger announcement, Platinum often deviated from the terms in its standard contract and accepted non-standard terms, such as terms proposed by customers. Under the Merger Agreement, Platinum was prohibited from offering non-standard terms without CA approval. After the merger announcement, CA approved some contracts containing non-standard terms and returned others to the sales representative for revision before granting approval.

Fixed-Price Contracts: Prior to the merger announcement, Platinum offered to provide consulting services for more than 30 days for a fixed price where Platinum performed a particular task for the stated price and assumed the risk of any cost overruns. The Merger Agreement prohibited Platinum from entering into consulting services contracts with fixed prices of more than 30 days in length. Although the Merger Agreement allowed fixed-price contracts shorter than 30 days, Platinum sales representatives were notified that no fixed-price contracts could be presented to customers without CA approval. Subsequently, all computer consulting service contracts, including fixed-price contracts, were submitted to CA for approval. CA approved many, but not all, computer consulting contracts that were submitted for its review.

Y2K Remediation Services: The Merger Agreement prevented Platinum from offering Y2K services without CA's prior written approval. Almost all new Y2K remediation activities ceased after the merger announcement. CA, however, reviewed all Y2K remediation proposals pending at the time of the merger announcement and a handful of proposals submitted after March 29. CA approved some Y2K remediation contracts and rejected others.

4. Other Indicia CA Exercised Operational Control Over Platinum's Business

Finally, CA, during the pre-consummation period, had sufficient control over Platinum's operations that it was able to change Platinum's method of booking revenues and reversed revenues previously recognized for customer contracts. CA even exercised approval authority over Platinum's participation at industry trade shows by canceling Platinum's participation at a trade show where Platinum would have presented its products and sought future business.

B. The Defendants' Agreement To Limit Platinum's Discounts Violated Section 1 of the Sherman Act

The Complaint alleges that the Merger Agreement and the Defendants' pre-consummation conduct had the effect of lessening or eliminating competition between CA and Platinum in the sale of certain software products in violation of Section 1 of the Sherman Act. Section 1 of the Sherman Act prohibits any ''contract, combination or conspiracy'' that is ''in restraint of trade.'' The pendency of a proposed merger does not excuse the merging parties of their obligations to compete independently. Thus, pending consummation, activities by one party to control or affect decisions of another with regard to price, output or other competitively significant matter may violate Section 1.

At the time of the tender offer, CA and Platinum were substantial competitors in numerous software markets. Under the Merger Agreement, CA and Platinum agreed that Platinum would not offer discounts greater than 20% off list prices for its software products unless CA approved the discount. In furtherance of this agreement, CA installed one of its Vice Presidents at Platinum's headquarters to review Platinum's proposed customer contracts and exercise authority to approve or reject proposed contracts offering discounts greater than 20%. CA also obtained prospective, customer-specific information regarding Platinum's bids, including the name of the customer, products and services offered, list price, discount, and the justification for any discount. Platinum placed no limits with respect to CA's use of this information. CA used this information to monitor Platinum's adherence to the Merger Agreement's limitation on discounts and to exercise its authority to approve or reject any proposed contract that offered discounts over 20%. The

Defendants' conduct had the effect of lessening or eliminating competition between them in the sale of various software products.

The Defendants' agreement to limit Platinum's right to independently set the price for its software products and their actions to effectuate this agreement were extraordinary and not reasonably ancillary to any legitimate goal of the transaction.

C. CA's Exercise of Operational Control Over Platinum Violated the HSR Act

The Complaint asserts that the Defendants' pre-consummation conduct also violated the HSR Act. The United States does not believe that the payment of civil penalties under the HSR Act is subject to the Administrative Procedures and Penalties Act (''APPA''). Consequently, the civil penalties component of the proposed Final Judgment is not open to public comment.[1] Although the civil penalty component of the Final Judgment is not open to public comment, it is appropriate in this case to use the Competitive Impact Statement to explain our views regarding CA's and Platinum's violation of the HSR Act.

1. The Purpose of the HSR Act

Prior to enactment of the HSR Act, the DOJ and FTC often investigated anticompetitive ''midnight mergers'' that had been consummated with no public notice. The merged entity thereafter had the incentive to delay litigation so that substantial time elapsed before adjudication and attempted relief. During this extended time, consumers were harmed by the reduction in competition between the acquiring and acquired firms and, if after adjudication, the court found that the merger was illegal, effective relief was difficult to achieve. The HSR Act was designed to strengthen antitrust enforcement by preventing the consummation of large mergers before they were investigated by the enforcement agencies. In particular, the HSR Act prohibits certain acquiring parties from consummating a merger before a prescribed waiting period expires.[2] The HSR waiting period remedies the problem of ''midnight mergers'' by keeping the parties separate, thereby preserving their status as independent economic actors during the antitrust investigation. The legislative history of the HSR Act makes this plain. Congress was concerned that competition existing before the merger should be maintained to the extent possible pending review by the antitrust enforcement agencies and the court. Consistent with this purpose, an acquiring person may not, after signing a merger agreement, exercise operational or management control of the to-be-acquired person's business.[3]

2. The Merger Agreement and Defendants' Pre-Consummation Actions Violated the HSR Act by Altering Their Status as Separate Economic Actors

Merger agreements typically contain ''interim covenants'' limiting the to-be-acquired person's operations during the pre-consummation period. The Merger Agreement between CA and Platinum contained a covenant typically found in most merger agreements that Platinum would continue to operate its business in the ordinary course of business. Such ''ordinary course'' provisions do not violate the HSR Act.

The Merger Agreement also contained many other customary covenants, including Platinum's agreement that it would not, without the prior written approval of CA: (1) Declare or pay dividends or distributions of its stock; (2) issue, sell, pledge, or encumber its securities; (3) amend its organizational documents; (4) acquire or agree to acquire other businesses; (5) mortgage or encumber its intellectual property or other material assets outside the ordinary course; (6) make or agree to make large new capital expenditures; (7) make material tax elections or compromise material tax liabilities; (8) pay, discharge or satisfy any claims or liabilities outside the ordinary course; and (9) commence lawsuits other than routine collection of bills. The purpose of these standard provisions is to prevent a to-be-acquired person from taking actions that could seriously impair the value of what the acquiring firm had agreed to buy. While these customary provisions limited Platinum's ability to make certain business decisions without CA's consent, they were also reasonable and necessary to protect the value of the transaction and did not constitute the HSR Act violation.

The Merger Agreement, however, did not stop with these customary covenants, but went further to impose extraordinary conduct of business limitations enabling CA to exercise operational control over significant aspects of Platinum's business. These restrictions and CA's exercise of operational control went far beyond ordinary and reasonable pre-consummation covenants and constituted a violation of the HSR Act. In the pre-merger context, an acquiring person may not exercise operational control of the to-be-acquired person's business. This is what CA did in this case.

Platinum, immediately upon executing the Merger Agreement, transferred to CA operational control of substantial aspects of its business,

[1] Obtaining civil penalties in a consent judgment is not the type of ''consent judgment'' Congress, had in mind when it passed the APPA. Thus, in consent settlements seeking both equitable relief and civil penalties, courts have not required use of APPA procedures with respect to the civil penalty component of the proposed final judgment. *See United States* v. *ARA Services, Inc.,* 1979–2 Trade Cas. (CCH) ¶ 62,861 (E.D. Mo.). Moreover, courts in this district have consistently entered consent judgments for civil penalties under the HSR Act without employing APPA procedures. *See e.g., United States* v. *Hearst Trust, et al.,* 2001–2 Trade Cases ¶ 73,451 (D.D.C.); *United States* v. *Input/Output et al.,* 1999–1 Trade Cas. (CCH) ¶ 24,585 (D.D.C.); *United States* v. *Blackstone Capital Partners II Merchant Banking Fund, et al.,* 1999–1 Trade Cas. (CCH) ¶ 72,484 (D.D.C.); *United States* v. *The Loewen Group, Inc.,* 1998–1 Trade Cas. (CCH) ¶ 72,151 (D.D.C.); *United States* v. *Mahle GMBH, et al.,* 1997–2 Trade Cas. (CCH) ¶ 71,868 (D.D.C.); *United States* v. *Figgie Int'l, Inc.,* 1997–1 Trade Cas. (CCH) ¶ 71,766 (D.D.C.); *United States* v. *Foodmaker, Inc.,* 1996–2 Trade Cas. (CCH) ¶ 71,555 (D.D.C.); *United States* v. *Titan Wheel International, Inc.,* 1996–1 Trade Cas. (CCH) ¶ 71,406 (D.D.C.); *United States* v. *Automatic Data Processing, Inc.,* 1996–1 Trade Cas. (CCH) ¶ 71,361 (D.D.C.); *United States* v. *Trump,* 1988–1 Trade Cas. (CCH) ¶ 67,968 (D.D.C.).

[2] The HSR Act requires that ''no person shall acquire, directly or indirectly, any voting securities or assets of any other person'' until both have made premerger notification filings and the post-filing waiting period has expired. 15 U.S.C. 18a(a). The post-notification waiting period following a tender offer, as in this proceeding, is 15 days from the filing of the premerger notification and then 10 additional days after the parties comply with the enforcement agency's request for additional information, if any. 15 U.S.C. 18a(b)(1), (e). The enforcement agency may grant early termination of the waiting period. 15 U.S.C. 18a(b)(2), and often does when the merger poses no competitive problems.

[3] The HSR Regulations also support the United States' position that the exercise of operational control triggers a violation of the HSR Act's prohibition of consummating an acquisition during the waiting period. The Regulations define an ''acquiring person'' as one who will ''hold'' voting securities directly or indirectly or through third parties. 16 CFR 801.2(a). ''Hold'' was defined as meaning ''beneficial ownership,'' 16 CFR 801.1(c), but beneficial ownership itself was not defined. In its ''Statement of Basis and Purpose'' (''SBP''), 43 FR 33450 (July 31, 1978), which accompanied the regulations, the FTC stated that, although ''beneficial ownership'' was not defined, its existence is to be determined ''in the context of particular cases'' with respect to the person enjoying the indicia of beneficial ownership. *Id.* at 33459. Consistent with the purpose of the SBP, the transfer of operational or management control is a significant attribute of beneficial ownership that may support the conclusion that the to-be-acquired firm has effectively exited the business prior to the HSR review being completed. *See United States* v. *Input/Output, et al.,* 1999–1 Trade Cas. (CCH) ¶ 24,585 (D.D.C.); *United States* v. *Titan Wheel International, Inc.,* 1996–1 Trade Cas. (CCH) ¶ 71,406 (D.D.C.).

including the right to set prices and other terms of customer contracts, enter into certain consulting services contracts, account for revenues, and participate at trade shows. To ensure compliance with the Merger Agreement's business restrictions, Platinum's CEO, COO, and CFO were personally liable if the restrictions were not observed. Moreover, a CA Divisional Vice President occupied an office at Platinum's Illinois headquarters where he reviewed proposed Platinum customer contracts and exercised authority to approve or reject contracts. In effect, the decision-making authority with respect to these business activities resided with CA's management, not Platinum's. Further exercising its operational control, CA obtained Platinum's competitively sensitive customer information without any restriction as to its use by CA or its dissemination within CA. This conduct demonstrates that CA and Platinum did not adhere to the requirement of the HSR Act that they remain separate and independent economic entities during the waiting period.

Both CA and Platinum were in violation of the HSR Act from March 29, 1999, the date on which the Merger Agreement was executed, through May 25, 1999, the day on which CA, Platinum, and DOJ agreed to a consent decree resolving DOJ's antitrust concerns.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment contains two forms of relief: (1) Injunctive provisions intended to prevent recurrence of the violation of Section 1 of the Sherman Act alleged in the Complaint; and (2) a monetary civil penalty from CA and Platinum for the violation of the HSR Act.

A. Sherman Act Relief

The proposed Final Judgment sets forth the conduct that CA is prohibited from engaging in, certain conduct that CA may engage in without violating the Final Judgment, a compliance program CA must follow, and procedures available to the United States to determine and ensure compliance with the Final Judgment. Section X provides that these provisions will expire ten years after entry of the Final Judgment.

1. Prohibited Conduct

Section IV of the proposed Final Judgment sets forth the substantive injunctive provisions and is designed to prevent the recurrence of the alleged Sherman Act Section 1 violation. Thus, Section IV(A) prohibits CA and a merger partner from agreeing to establish the price of any product or services offered in the United States to any customer during the preconsummation period. The proposed Final Judgment also would prevent the repetition of the conduct CA employed to facilitate its agreement with Platinum to establish prices. Specifically, Section IV(B) prohibits CA from entering into an agreement to review, approve or reject customer contracts during the pre-consummation period, and Section IV(C) prohibits CA from entering into an agreement that requires a party to provide bid information to another party.

2. Permitted Conduct

Section V of the proposed Final Judgment identifies certain agreements and conduct that are not prohibited by the Judgment. Sections V(A), and (B) and (C) authorize the use of certain ''interim covenants'' that are either typically found in merger agreements or are not likely to restrict competition. Section V(A) permits the use of a provision that requires the to-be-acquired person to operate its business in the ordinary course consistent with past practices. Section V(B) permits the use of material adverse change provisions which give the acquiring person certain rights in the event there is a material adverse change in the to-be-acquired person's business. These are customary provisions found in most merger agreements and are intended to protect the value of the transaction and prevent the to-be-acquired person from wasting assets. Under Section V(C), CA would be able to prevent a to-be-acquired person from offering customers during the pre-consummation period enhanced rights or refunds of any nature upon a change of control of the to-be-acquired firm. For example, CA could prohibit a to-be-acquired person from offering a full refund of all license and maintenance fees if CA consummates the merger. The use of such a provision is not likely to restrict competition.

Section V(D) recognizes a narrow exception to the prohibition in Section IV(C) concerning CA's access to customs bid information. As a general rule, in a merger between competitors one merging party should not obtain another party's prospective, customer-specific bid information prior to consummation of the transaction. Access to such information raises significant antitrust risks because it could be used to reduce competition during the pre-consummation period or after if the transaction is subsequently abandoned or blocked. There may be situations, however, where a merging party has a legitimate business need for certain bid information prior to closing. For example, during the due diligence process a party may need information regarding pending contracts in the pipeline to properly value the business or to assess the future growth of the business. To reduce antitrust exposure where bid information is necessary for due diligence purposes, merging parties generally consult with counsel about the specifics of their particular situation and adopt a variety of safeguards. Such safeguards may include employing an independent agent to collect the information and present the information in an aggregated or other form that shields customer-specific and other competitively sensitive information. In addition, a non-disclosure agreement is often use to limit use of any bid information for due diligence purposes. In some cases, merging parties opt not to receive bid information, and instead use other mechanisms to adjust the value after closing.

Under Section V(D), CA may obtain pending bid information of the other party for due diligence purposes only to the extent that the bids are material to the understanding of the future earnings and prospects of the other party and only pursuant to an appropriate non-disclosure agreement. This non-disclosure agreement must ensure that CA employees who receive material bid information do not use the information to harm competition. Material bid information may only be provided to CA employees who have a legitimate need for the information, such as employees with due diligence responsibilities or who are responsible for negotiating the transaction. In addition, material bid information may not be provided to CA employees who are directly involved in the marketing, pricing or sale of competing products. Thus, the information may not be provided directly or indirectly to any CA employee involved in day-to-day sales or marketing activities or otherwise use in the sales process. With respect to non-material bids, CA may not obtain such information except where necessary for due diligence purposes and where the information is collected by an independent agent, subject to appropriate use and confidentiality limitations.

This limited access to bid information is consistent with the relief sought in the Complaint. The Complaint alleged that CA collected and use Platinum's bid information in furtherance of its agreement to limit Platinum's discounts. The Complaint did not address the situation where CA had a legitimate need for material bid information and

where such information was provided subject to appropriate limitations and confidentiality protections.

Finally, Sections V(E) and (F) clarify that the proposed Final Judgment does not prohibit CA from entering into certain price agreements or engaging in certain joint activities that would have been lawful independent of the proposed merger. Section V(D) permits price agreements in the context of an otherwise lawful joint bid situation, and Section V(E) permits price agreements in an otherwise lawful distribution relationship.

3. Compliance

Sections VI and VII of the proposed Final Judgment set forth various compliance procedures. Section VI sets up an affirmative compliance program directed toward ensuring CA's compliance with the limitations imposed by the proposed Final Judgment. The compliance program includes the designation of a compliance officer who is required to distribute a copy of the Final Judgment to each present and succeeding director, officer, employee and agent with responsibility for mergers and acquisitions, brief each such person regarding compliance with the Final Judgment, and obtain certifications from each such person that they have received a copy of the Final Judgment and understanding their obligations under the Judgment. In addition, the compliance officer must provide a copy of the Final Judgment to a potential merger partner before the initial exchange of a letter of intent, definitive agreement or other agreement of merger. Section VI of the proposed Final Judgment further requires the compliance officer to certify to the United States that it is in compliance and report any violations of the Final Judgment.

To facilitate monitoring CA's compliance with the Final Judgment, Section VII grants DOJ access, upon reasonable notice, to CA's records and documents relating to matters contained in the Final Judgment. CA must also make its personnel available for interviews or depositions regarding such matters. In addition, upon request, CA must prepare written reports relating to matters contained in the Final Judgment.

These provisions are fully adequate to prevent recurrence of the type of illegal conduct alleged in the Complaint. The proposed Final Judgment should ensure that CA in future mergers or acquisitions will not enter into agreements to limit price competition during the preconsummation period. Consequently, customers will receive the benefits of free and open competition.

B. Civil Penalties

Under section (g)(1) of the HSR Act, 15 U.S.C. 18a(g)(1), any person who fails to comply with the Act shall be liable to the United States for a civil penalty of not more than $11,000 for each day during which such person is in violation of the Act.[4] As the Stipulation and proposed Final Judgment indicate, Defendants have agreed to pay civil penalties totaling $638,000 within 30 days of entry of the Final Judgment. While the United States was prepared to seek civil penalties totaling $1,267,000 at trial, the uncertainties inherent in any litigation led to acceptance of $638,000 as an appropriate civil penalty for settlement purposes. Moreover, this civil penalty should be sufficient to deter CA and other acquiring persons from exercising operational control over a to-be-acquired person during the HSR waiting period.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no effect as prima facie evidence in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the injunction portion of the proposed Final Judgment is in the public interest.

The APPA provides a period of a least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Sherman Act injunction contained in the Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by DOJ, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with this Court and published in the **Federal Register**. Written comments should be submitted to:

Renata B. Hesse, Chief, Networks and Technology Section, United States Department of Justice, Antitrust Division, 600 E. Street, NW., Suite 9500, Washington, DC 20530.

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States is satisfied, however, that a trial would not result in further injunctive relief than is contained in the proposed Final Judgment. Moreover, the proposed injunctive relief and payment of civil penalties are sufficient to achieve the primary objective of the litigation—deterring CA and any potential merger partner from entering into agreements on price and from failing to comply with the waiting period requirements of the HSR Act.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that injunctions of anticompetitive conduct contained in proposed consent judgments in antitrust cases brought by United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment is ''in the public interest.'' In making that determination, the court *may* consider—

[4] The maximum daily civil penalty, which had been $10,000, was increased to $11,000 for violations occurring on or after November 20, 1996, pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104–134 Sec. 31001(s) and Federal Trade Commission Rule 1.98, 16 CFR 1.98.61 FR 54548 (Oct. 21, 1996).

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the Government's Complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [5] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[6]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462–63 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1458. Precedent requires that

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[7]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. A ''proposed decree must be approved even if it falls short of the remedy the court would impose on it own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' [8]

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459. Since the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that the Court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. *Id.*

III. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: April 23, 2002.

Respectfully submitted,

Renata B. Hesse, N. Scott Sacks, James J. Tierney (D.C. Bar#434610), Jessica N. Butler-Arkow, David E. Blake-Thomas, Larissa Ng Tan,

Attorneys, U.S. Department of Justice, Antitrust Division, Networks and Technology Section, 600 E Street, NW., Suite 9500, Washington, DC 20530, 202/307–0797.

Certificate of Service

I hereby certify that a copy of the foregoing Competitive Impact Statement was hand delivered this 23rd day of April 2002, to: Counsel for Computer Associates International, Inc. and Platinum *technology* International, *inc.*

Richard L. Rosen, Esquire, Arnold & Porter, 555 Twelfth Street, NW., Washington, DC 20004–1206, Fax: 202/547–5999.

James L. Tierney.

[FR Doc. 02–15328 Filed 6–17–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Judgment

Notice is hereby given that Defendant General Electric Co. has filed a motion to terminate the Final Judgment in *United States* v. *General Electric Company, et al.,* Civil Action No. 26012, with the United States District Court for the Northern District of Ohio, and that the Department of Justice, in a stipulation also filed with the Court, has tentatively consented to termination of the Final Judgment, but has reserved the right to withdraw its consent pending receipt of public comments. Acuity Brands, Inc. (successor to Defendant Holophane Co., Inc.), Cooper Industries, Inc. (successor to Defendants Westinghouse Electric Corp. and Line Material Company), and Union Metal Corp. (apparent successor to both Defendant Union Metal Manufacturing Co. and its subsidiary Defendant Pacific Union Metal Co.) all have executed the stipulation, indicating their support for termination of the Final Judgment as to all defendants and successors thereof.

On November 12, 1948, the United States filed its Complaint in this case alleging that defendants conspired to restrain and monopolize the market for street lighting equipment by, among other things, fixing prices, allocating

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[5] 119 Cong. Rec. 24,598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, those procedures are discretionary (15 U.S.C. 16(f)). A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceeding would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6535, 6538.

[6] *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977); *see also United States* v. *Loew's Inc.,* 783 F. Supp. 211, 214 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Mgmt., Inc.*, 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

[7] *United States* v. *Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F. 2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984).

[8] *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (*quoting Gillette*, 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *United States* v. *Alcan Aluminum, Ltd*, 605 F. Supp. 619, 622 (W.D. Ky. 1985); *United States* v. *Carrols Dev. Corp.*, 454 F. Supp. 1215, 1222 (N.D.N.Y. 1978).

markets, collectively refusing to deal with certain suppliers and customers of street lighting equipment, and entering into exclusive supply or distribution agreements. On May 27, 1952, a Final Judgment was entered with the consent of the parties. The Final Judgment applies to Defendant GE and to corporate successors of all other named defendants. The Final Judgment provisions that remain in effect enjoin and restrain defendants from, among other things, renewing, performing, or enforcing any of the terminated agreements or entering into, performing, or enforcing any other agreements having the same purpose or effect; fixing prices, allocating territories, customers, or markets; exchanging with or disclosing to other street lighting equipment manufacturers competitively sensitive information; collectively refusing to deal with certain suppliers or customers; dealing only exclusively with certain other suppliers or customers; and acquiring any other defendant or street lighting equipment manufacturer. Due to the passage of time and changes in the industry, the United States believes the Final Judgment is no longer necessary to preserve competition in the street lighting equipment business.

The Department has filed with the Court a memorandum setting forth in detail the reasons why the United States believes that termination of the Final Judgment would serve the public interest. Copies of Defendant GE's motion papers, the stipulation containing the Government's tentative consent, the Government's memorandum, and all further papers filed with the Court in connection with this motion will be available for inspection at the Antitrust Documents Group of the Antitrust Division, Room 215, 325 7th Street NW., Liberty Place Building, Washington, DC 20530, and at the Office of the Clerk of the Court, United States District Court for the Northern District of Ohio, 201 Superior Avenue, Cleveland, OH 44114 (216/522–4355). Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Final Judgment to the Government. Such comments must be received by the Division within sixty (60) days and will be filed with the Court by the Government. Comments should be addressed to James R. Wade, Chief, Litigation III Section, Antitrust Division, Department of Justice, Liberty Place Building, Suite 300, 325 7th Street NW., Washington, DC 20530 (202/616–5935).

Dorothy B. Fountain,

Deputy Director of Operations.

[FR Doc. 02–15327 Filed 6–17–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Ethernet in the First Mile Alliance

Notice is hereby given that, on April 17, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Ethernet in the First Mile Alliance (''EFMA'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BATM Advanced Communications, Yokneam Ilit, ISRAEL; Calix, Petaluma, CA; Fiberintheloop, Marlow, UNITED KINGDOM; Hatteras Networks, Research Triangle Park, NC; Infineon Technologies AG, Munich, GERMANY; Passave, Inc., Tel Aviv, ISRAEL; Spirent Communications, Calabasas, CA; and Texas Instruments, Dallas, TX, have been added as parties to this venture. Also, Elastic Networks, Alpharetta, GA, has been acquired by Paradyne, Alpharetta, GA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and EFMA intends to file additional written notifications disclosing all changes in membership.

On January 16, 2002, EFMA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2002 (67 FR 10760).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–15326 Filed 6–17–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on May 13, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lockheed Martin Information Systems, Orlando, FL has been added as a party to this venture. Also, Ericsson, Gevle, SWEDEN; L3 Communications Analytics Corporation (formerly Emergent Information Technologies), Vienna, VA; and Software AG, San Ramon, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notification disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on August 20, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 4, 2001 (66 FR 50682).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–15236 Filed 6–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993__Management Service Providers Association, Inc.

Notice is hereby given that, on May 3, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Management Service Providers Association, Inc. has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Geotrust, Wellesley, MA; Newtwork Guidance, Minnetonka, MN and Trilogy CSI Pty, LTD, Rosebery, New South Wales, AUSTRALIA have been added as parties to this venture; and NetEffect Corp, Atlanta, GA; Aprisma Management Technologies, Durham, NH; and Applicant, Seattle, WA have been dropped as parties to this venture. Also, Redklay, Ann Arbor, MI has changed its name to Fullscope and Nuclio, Chantilly, VA has changed its name to Sevenspace/Nuclio.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Management Service Providers Association, Inc. intends to file additional written notification disclosing all changes in membership.

On October 20, 2000, Management Service Providers Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 24, 2000 (65 FR 70613).

The last notification was filed with the Department on February 11, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 27, 2002 (67 FR 14730).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–15325 Filed 6–17–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Core Protocol International Partnership Association, Inc.

Notice is hereby given that, on May 10, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.,* (''the Act''), OCP International Partnership Association, Inc. (''OCP–IP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identifies of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identity of the only party at this time is Easterel Technologies, Inc., Guyancourt, FRANCE. OCP–IP is dedicated to addressing problems relating to design, verification and testing which are common to IP core reuse in ''plug and play'' system-on-chip designs. OCP–IP intends to undertake cooperative research, development, formulation and experimentation activities concerning these problems and the ''open core protocol'' for system-on-chip design. The nature and objectives are to (a) provide a forum for industry participants to contribute to the development and promote the evolution of the ''open core protocol'' for the system-on-chip products; (b) to develop conformance standards and tests for determining compliance with the ''open core protocol''; (c) to support the development of products that are compliant with the ''open core protocol''; (d) to support, promote and accelerate the acceptance and use of the ''open core protocol'' for system-on-chip products; and (e) to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Additional information concerning OCP–IP may be obtained from Ian Mackintosh, President of OCP International Partnership Association, Inc., at OCP International Partnership, 5440 SW. Westgate Dr., Suite 217, Portland, OR 97221, (503) 291–2560.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–15237 Filed 6–17–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum (''PERF'') Project No. 99–13

Notice is hereby given that, on May 15, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Chevron Texaco Energy Research and Technology Company, a division of Chevron USA, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identifies of the parties are Chevron Texaco Energy Research and Technology Company, Richmond, CA; BP North America, Inc., Naperville, IL; Unocal, Brea, CA; Canadian Association of Petroleum Producers, Calgary, Alberta, CANADA; and ExxonMobil Production Company, Houston, TX. The nature and objectives of the venture are to identify, develop and/or improve methods for implementing bioavailability, developing risk based screening levels for new types of chemicals and wastes, developing software and analytical tools, and developing communication tools for gaining acceptance of risk assessment both in the U.S. and internationally.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–15239 Filed 6–17–02; 8:45 am]

BILLING CODE 4140–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation (''POSC'')

Notice is hereby given that, on March 14, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petrotechnical Open Software Corporation (''POSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SD Geologix, Norwich, UNITED KINGDOM; Oil and Natural Gas Corporation Ltd., Dehra Dun, INDIA; and Flare Consultants Limited, Marlow, UNITED KINGDOM have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Petrotechnical Open Software Corporation (''POSC'') intends to file additional written notification disclosing all changes in membership.

On January 14, 1991, Petrotechnical Open Software Corporation (''POSC'') filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 7, 1991 (56 FR 5021).

The last notification was filed with the Department on February 23, 2000. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13971).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–15240 Filed 6–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on May 13, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Digalog Systems, Inc., New Berlin, WI; Signametrics, Seattle, WA; and JTAG Technologies, Sammamish, WA has been added as parties to this venture. Also, C&H Technologies, Austin, TX; and PLD Applications, Gardanne, FRANCE have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on February 13, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 27, 2002 (67 FR 14731).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–15238 Filed 6–17–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Combating Child Labor in Zambia Through Education

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of availability of funds and solicitation for cooperative agreement Applications (SGA 02–07).

This notice contains all of the necessary information and forms needed to apply for cooperative agreement funding.

SUMMARY: The U.S. Department of Labor, Bureau of International Labor Affairs will award up to US $2 million through a cooperative agreement to an organization or organizations to improve access to quality education programs as a means to combat child labor in Zambia. The program will complement and expand upon existing activities to improve education in select rural and peri-urban communities, predominantly in the Copperbelt, Eastern, Lusaka, Southern and/or Western Provinces, to prevent children's migration to urban areas and engagement in the worst forms of child labor. The education program will work towards reduced child labor in Zambia through: (1) Improved community awareness-raising efforts on the importance of education for children engaged in or at risk of the worst forms of child labor; (2) strengthened quality of educational opportunities in government and alternative schools; (3) increased ministerial and NGO capacity and inter-institutional coordination; and (4) improved resource mobilization.

DATES: The closing date for receipt of applications is July 31, 2002. Applications must be received by 4:45 p.m. (Eastern Time) at the address below. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored. Telegram, facsimile (FAX), and e-mail applications will not be honored.

ADDRESSES: Application forms will not be mailed. They are published in this **Federal Register** Notice, and in the **Federal Register** which may be obtained from your nearest U.S. Government office or public library or online at *http://www.nara.gov/fedreg/nfpubs.html.* Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Reference: SGA 02–07, Washington, DC 20210. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; however, the applicant bears the responsibility for timely submission.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey-lisa@dol.gov.* All applicants are advised that U.S. mail delivery in the Washington, DC area has been slow and erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free

number), prior to the closing deadline. All inquiries should reference SGA 02–07. See Section III.C for additional information.

SUPPLEMENTARY INFORMATION: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be granted by cooperative agreement (hereafter referred to as ''grant'') to one or more qualifying organizations for the purpose of promoting school attendance and combating child labor in Zambia. The grant will be managed by ILAB's International Child Labor Program to assure achievement of the stated goals. Applicants are encouraged to be creative in proposing cost-effective interventions that will have a demonstrable impact in promoting school attendance and reducing migration of children from rural and peri-urban areas to urban communities and the incidence of Zambian children engaged in or most at risk of working in the worst forms of child labor.

I. Background and Program Scope

A. USDOL Support of Global Elimination of Child Labor

The International Labor Organization (ILO) estimates 250 million children between the ages of five and 14 work in developing countries, with about half working full-time. Full-time child workers are generally unable to attend school and part-time child labors balance economic survival with schooling from an early age, often to the detriment of their education. Since 1995, the U.S. Congress has directed USDOL to support worldwide technical assistance programs implemented by the International Labor Organization's International Program on the Elimination of Child Labor (ILO/IPEC). To date, USDOL has contributed US $112 million to ILO/IPEC, making the United States the program's largest donor and a leader in global efforts to combat child labor.

In Zambia, USDOL has provided over US $1.5 million for four ILO/IPEC projects to improve data collection, support a national program seeking progressive elimination of child labor, withdraw children from Zambia's worst forms of child labor (as defined by the ILO Convention No. 182), and participate in regional efforts to withdraw children from hazardous work in commercial agriculture and conduct further research on the relationship between HIV/AIDS and child labor. (For further information regarding USDOL funded ILO/IPEC activities in Zambia *see* Appendix C.)

In FY 2001 and FY 2002, in addition to US $90 million in funds earmarked for ILO/IPEC efforts, US $74 million was appropriated to USDOL for a Child Labor Education Initiative to fund programs increasing access to quality, basic education in areas with a high incidence of abusive and exploitative child labor. The grant awarded under this solicitation will be funded through this new initiative.

USDOL's Child Labor Education Initiative seeks to nurture the development, health, safety and enhanced future employability of children around the world by increasing access to basic education for children removed from work or at risk of entering into labor. Child labor elimination depends in part on improving access to, quality of, and relevance of education.

The Child Labor Education Initiative has four goals:

1. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;
2. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;
3. Strengthen national institutions and policies on education and child labor; and
4. Ensure the long-term sustainability of these efforts.

B. Child Labor and Educational Access in Zambia

Child labor in Zambia is set in a context of severe economic deterioration, rising HIV/AIDS rates and pervasive poverty. An estimated 73 to 90 percent of the population lives below the poverty line; and 20 percent of Zambians aged 15 to 49 are HIV/AIDS infected. Over one million children are expected to be orphaned by the disease by 2014. At least 75 percent of households care for those affected by HIV/AIDS; 37 percent have taken in orphaned children; and children head approximately seven percent of all households.

Increased family sizes and child-headed households have significant ramifications on child labor. The 1999 Zambia Child Labor Survey found that child labor rates rapidly increase the larger the household. In 1999, of 3.8 million children aged 5–17, over 15 percent (595,033) worked. While approximately 87 percent of working children nationally labor in the agricultural sector, the number of children migrating to urban areas and living as street children has recently exploded. In 1998, an estimated 75,000 children lived on the street and this number continues to grow. With recent ratification by Zambia of ILO Convention No. 182 on the Worst Forms of Child Labor (ILO Convention No. 182), Zambia has committed to immediate and effective measures to prohibit and eliminate the worst forms of child labor, including work that by its nature is hazardous, work in illicit activities such as the drug trade, and prostitution or sexually exploitative labor. Zambian children living in rural and peri-urban communities that are near main truck routes are particularly at risk of engaging in prostitution at truck stops and find easy access into urban centers, where they become street children exposed to many hazards and involved in exploitative or dangerous labor.

Over the last twenty years, Zambia's education system has greatly deteriorated, in part due to falling public resources for schools. A cost-sharing policy introduced in 1995 shifted many school expenditures, including building maintenance and school supplies, to families and communities. The Zambian government estimates that between 600,000 and 800,000 children are currently out of school. UNICEF has reported that three-fourths of children dropping out of primary school do so because of the associated costs. Since 1996, Zambia's Ministry of Education (MOE) has sought to stem declining school attendance, first with the *Educating Our Future* policy aimed at promoting education for all and then by launching the Basic Education Sub-sector Investment Program (BESSIP). This large-scale education reform effort seeks improved access, quality and relevance of education with the assistance of international donors, and specifically decentralizes more management and personnel decisions to the provinces. Alternative school activities have also developed to meet the needs of out-of-school children. These include over 700 ''community schools,'' around the country, organized and managed by communities and independent from the existing government structures, that come together under an umbrella organization called the Zambian Community Schools Secretariat (ZCSS). The government has also introduced Interactive Radio Instruction (IRI) to provide basic education to out-of-school children through a radio broadcasted educational program gathered in one of 350 centers throughout Zambia with the help of volunteer community mentors.

The Zambian government, international donors and many local organizations have also invested in

community-based mobilization strategies to address the reasons children do not attend school. Some of the key actors include the Ministries of Community Development and Social Services (MCDSS); Sport, Youth and Child Development (MSYCD); Labor and Social Security (MLSS); ILO/IPEC; UNICEF; USAID; Children in Need Network (CHIN); and ZCSS among others. (See Appendix D for further information.)

C. Barriers to Educating Children Engaged in or at Risk of Working in the Worst Forms of Child Labor

Despite the many activities underway in Zambia, efforts to ensure the most vulnerable children—orphans, street children, poor children, out-of-school and working children, girls, and children with disabilities—have access to quality educational opportunities inevitably face shortcomings. At the local, regional, and national levels, there simply are not enough resources or capacity to address the many and complex needs. Some major barriers to meeting the educational needs of children engaged in or at risk of entering the worst forms of child labor in Zambia are listed below:

1. Lack of Knowledge and Awareness

Community members' ability to improve the educational outcomes of children engaged in or at risk of engaging in the worst forms of child labor is in part dependent on understanding these children's educational needs and the resources available to address the problems. Some of the gaps in knowledge and awareness at the local level include:

- Lack of awareness by social partners of their potential role in reducing child labor and promoting school attendance.

Media attention and awareness-raising efforts have taken place in Zambia on children's rights and the problem of child labor. However, local actors including political and educational authorities, NGOs, media, faith-based and community organizations and religious leaders, local chiefs, local authorities, teachers and heads of school, and employers may not understand the educational needs of children engaged in or at risk of engaging in the worst forms of child labor. They often lack awareness of concrete actions that could take place in their communities to reduce child labor and promote school attendance and families often feel powerless to change a severely deteriorated education system. Additionally, national awareness-raising campaigns often do not reach community members who do not speak English or who are illiterate, as materials are often in print and are not provided in local languages.

- Lack of awareness of new child labor and education policies and strategies.

With ratification of ILO Convention No. 182, the Zambian government committed to immediate action to eliminate the worst forms of child labor. However, this is not well known by individuals, local leaders and communities, nor are the implications of the commitment understood. Activities at a national level, such as reconciled inconsistencies in education policy and child labor law, have not reached local communities. For example, the 1996 Education Policy declared that no child should be barred from attending school due to inability to pay school fees. However, because of a lack of monitoring tools and systems for enforcing such policies, many local community decision-makers continue to use fees as a way of preventing overcrowding and covering basic school finances. As the MOE moves towards further decentralization, local authorities will need to be particularly sensitive to the barriers faced by children engaged in or at risk of entering the worst forms of child labor.

2. Education System Constraints

Some Zambian parents and guardians are reluctant to send their children to school because they rely on them for work, to scavenge for food, or to care for sick relatives. However, parents and guardians are also dissuaded because of the low quality of schools and disbelief that attending school will increase their children's knowledge and skills or lead to better paying jobs or improved quality of life. There are a number of specific barriers to school quality for the Zambian children engaged in or at risk of entering the worst forms of child labor, including:

- Inadequately trained teachers with low motivation.

In government and community schools, teachers are often poorly trained or lack adequate qualifications. In rural and outlying areas in particular, adequately staffing schools is hampered by high attrition rates of teachers due to death and illness resulting from HIV/AIDS, poor comparative compensation packages (including housing), and difficult working conditions. As a result, quality teachers are more likely to stay in urban areas or migrate to other countries such as Botswana where the pay is higher. Because of the lack of teachers in rural areas, school buildings might be unused. Where there is at least one teacher, class sizes can end up in the hundreds. Lack of teachers in government schools is one reason that community schools have emerged, where community members take it upon themselves to provide an education to children, despite receiving little or no compensation. However, teachers in community schools, as well as community mentors leading the radio-based IRI classes, are largely untrained and lack classroom experience and, therefore, are not familiar with curriculum development or basic classroom instruction. The MOE has signed a Memorandum of Agreement with the ZCSS to send government personnel to community schools or offer community volunteers access to teacher training programs.

- Lack of relevant or quality curriculum.

The MOE is working to improve the quality of literacy, numeracy, life skills, HIV/AIDS education and other curricular materials for government schools. However, teachers, students and guardians often complain that what is taught in schools is not relevant or practical, particularly in rural communities. The ZCSS has made some strides in improving the quality of community school instruction by developing the SPARKS (School, Participation, Access and Relevant Knowledge) curriculum, which adapts the government curriculum to better serve the needs of children who have been out of school for sometime. However some 200 schools are not registered by the ZCSS, indicating that minimum academic standards have not been met.

Children withdrawn from labor also have particular needs current curriculum does not address. The MOE plans to review the government curriculum in light of the needs of child laborers (see Appendix D), however local teachers and school administrators will continue to need assistance in effectively tailoring curricula to the learning needs of children in their communities who are engaged in or at risk of engaging in the worst forms of child labor.

- Lack of basic teaching supplies.

Teachers in rural and outlying districts often lack the basic education materials they need to effectively teach. While the MOE has provided some government schools with textbooks and teacher-guides, these efforts fall short of the need. Teachers also report shortages in supplies like chalk and maps. Community schools and the radio-based IRI centers face similar deficiencies in supplies. For example, communities interested in organizing a learning

center may be unable to access radios, batteries, or IRI teaching guides with which to conduct the class.

• Limited access to quality vocational education.

Many older children and their families often realize that they cannot complete or study beyond primary school. In these cases, technical or vocational education would be a preferred option. In Zambia there are many challenges to obtaining good vocational education. Government and NGOs programs do not sufficiently address the demand, are not often of high quality, and do not always lead to opportunities in the formal employment sectors. Older children often have difficulty affording the cost of these programs or do not meet minimum standards, and for child heads of households this can be particularly challenging. Poor children who have engaged in apprenticeship programs also often have difficulty obtaining the tools and supplies they need to effectively put their training to use. Lacking academic or occupational options, these youngsters may have little recourse to entering into exploitative and abusive employment or apprenticeships.

3. Institutional and Policy Challenges

Zambian government ministries concerned with child welfare, national-level institutions, and NGOs face a number of challenges to their capacity and infrastructure, given the vast needs in Zambia. Some of these include:

• Lack of quality national data systems for policy formulation.

Estimating the number of children engaged in child labor and determining the correlation between labor, school attendance and educational performance cannot be done without an effective and maintainable data system. The Zambian government, institutions and NGOs have established or are developing databases and information collection mechanisms on child laborers and vulnerable children's educational progress. Efforts include the monitoring of equity gender issues from schools, districts, provincial and national levels as part of BESSIP; ZCSS's Community School Database; data collection on performance of the IRI; the proposed database on child labor to be managed by the MLSS; individual NGOs collecting working children's profiles; and others. However, these institutions have insufficient human resources and infrastructure capacity to maintain these systems and update the information frequently so that the data can be effectively used to inform policy and improve programs.

• Challenges implementing decentralization of education policy.

Decentralization promotes broad-based participation in the management of education and places emphasis on creativity, innovation and imagination of the local-level education managers. While this approach may foster a greater sense of local ownership and promote better delivery of services, many communities do not yet have the capacity to fully participate and hold educational authorities accountable, and will need support to effectively take on the role. Additionally, local educational authorities often lack experience or capacity in areas like educational planning, resource allocation, and monitoring for educational quality.

• Limited national coordination on the educational needs of child laborers.

Many actors are involved in addressing issues related to child labor and seeking to improve educational access for the most vulnerable of Zambia's children, including those identified in Section I.B and Appendix D. Though some coordination has taken place among individual entities, greater focus is needed among and between NGOs and government ministries on the specific educational needs of the children most at risk of entering the worst forms of child labor. For instance, the Departments of the Ministries of Community Development and Social Welfare and Sports, Youth and Child Development are members of the Children in Need Network (CHIN). The National Steering Committee on Child Labor established through the ILO/IPEC national program includes representation of several ministries, UNICEF and CHIN, among others. However, currently these groups tend to focus on the needs of street children in Lusaka and less on the needs of working children in the rural and peri-urban communities and preventative actions to halt children's migration. While it is in the explicit mission of ministries concerned with child welfare to address the needs of vulnerable children, the varying resources of these ministries could be better coordinated to address the sizable number of children they target. Advocacy organizations and NGOs also have had successes at the local level that could be shared more effectively and used as models in government policy and resource delivery.

4. Resource Constraints

Given Zambia's vast poverty and severe economic problems, there are a number of challenges due to a lack of resources that impede both local and national actors from effectively providing children engaged in or at risk of entering the worst forms of child labor with quality educational opportunities, including:

• Family poverty and lack of access to social protection programs.

School fees are often quite high and, with little or no wages, parents and guardians frequently cannot cover the required costs of books, supplies and Parent Teacher Association fees. When these fees are compounded with the lost wages of a child removed from labor, the costs can prohibit school attendance. Malnutrition and poor health are also barriers to learning for poor children, particularly in large extended families. If parents and guardians are unable to access poverty alleviation programs, income generation activities, or food and health programs for their children, other educational improvement efforts are unlikely to be successful.

• Non-existent or poor school infrastructure.

In some communities there are no government schools and distances to school buildings can exceed 10 kilometers. Under BESSIP almost 2000 classrooms have been constructed since 1999 and there are plans to construct more. However, in the short-term there are not enough school spaces for all children and large number of existing schools require rehabilitation to be safe. Community schools have also emerged to address this gap in school infrastructure. However, as classes are often conducted in the open air if a school building does not exist, conditions are not optimal.

• Limited public resources for education.

Although the public sector resources devoted to education have increased under BESSIP, they are still insufficient relative to the vast need. For example, government sponsored bursaries to enable the most vulnerable children, such as child laborers, to pay educational fees do not adequately support the large number of eligible children. Additionally, though it may be reasonable to develop alternative school schedules such as evening programs to address overcrowding or cater to the needs of children currently caring for sick family members, working children and youth, it has not been possible to pay teachers for additional class time. The Government of Zambia acknowledges that it cannot meet the educational needs of all by itself, and it is because of these resource constraints that the government has encouraged and supported alternative schooling options. However, community schools or IRI programs put additional pressures on

communities to mobilize resources for education and to address their own problems.

The above barriers to access and quality of education for children engaged in or at risk of entering the worst forms of child labor manifest themselves in different ways in different communities. While these headings attempt to capture the greatest barriers for communities, it must be recognized that solving these problems requires identifying the key actors and major impediments to schooling at a community level.

II. Authority

ILAB is authorized to award and administer this program by the Consolidated Appropriations Act, 2001, Pub. L. 106–554, 114 Stat. 2763A–10 (2000).

III. Application Process

A. Eligible Applicants

Any commercial, international, or non-profit organization capable of successfully developing and implementing education programs for child laborers or children at risk is eligible to apply for this grant. Partnerships of more than one organization are also eligible, and applicants are strongly encouraged to work with organizations already undertaking projects in Zambia, including local NGOs (*see* Appendix D). In the case of partnerships, a lead organization must be identified. The capability of an Applicant or Applicants to perform necessary aspects of this solicitation will be determined under Section V.B Rating Criteria and Selection.

Please note that eligible grant applicants must not be classified under the Internal Revenue Code as a 501(c)(4) entity. See 26 U.S.C. 501(c)(4). According to section 18 of the Lobbying Disclosure Act of 1995, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

B. Submission of Applications

One (1) ink-signed original, complete application in English plus two (2) copies of the application, must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW, Room N–5416, Washington, DC 20210, not later than 4:45 p.m. Eastern Time, July 31, 2002. Accompanying documents must also be in English. To aid with review of applications, USDOL also encourages Applicants to submit two additional paper copies of the application (five total). Applicants who do not provide additional copies *will not* be penalized.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, ''Application for Federal Assistance'' (Appendix A) (The entry on SF 424 for the Catalog of Federal Domestic Assistance Number (CFDA) is 17.700) and sections A–F of the Budget Information Form SF 424A (Appendix B). Part II must contain a technical application that demonstrates capabilities in accordance with the Statement of Work (Section IV.A) and Rating Criteria (Section V.B).

To be considered *responsive* to this solicitation, the application must consist of the above-mentioned separate sections not to exceed 25 single-sided ($8\frac{1}{2}'' \times 11''$), double-spaced, 10 to 12 pitch typed pages. *Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated.* Standard forms and attachments are *not* included in the page limit. Each application must include a table of contents and an abstract summarizing the application in not more than two (2) pages. These pages are also *not* included in the page limits.

Upon completion of negotiations, the individual signing the SF 424 on behalf of the Applicant must be authorized to bind the Applicant.

C. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 pm Eastern Time, July 31, 2002, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before July 31, 2002;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 pm at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to July 31, 2002.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Service Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted, however, the applicant bears the responsibility for timely submission. Because of delay in the receipt of mail in the Washington, DC area, it is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. All inquiries should reference SGA 02–07.

D. Funding Levels

Up to US $2 million is available for this program. Although USDOL will award only one grant, a partnership of more than one organization may apply to implement the program.

E. Program Duration

The duration of the program funded by this SGA is four (4) years. The start date of program activities will be negotiated upon awarding of the grant.

IV. Requirements

A. Statement of Work

The Applicant will propose creative and innovative approaches aimed at reducing and preventing child labor in Zambia and the migration of children to urban areas putting them at risk of hazardous and exploitative labor. The approach suggested by the Applicant will include actions that promote an enabling environment at the national and provincial level, and specific interventions at the local level to improve basic education options in rural and peri-urban communities where there is the greatest risk of having children engage in the worst forms of labor. For instance, areas with communities and families in extreme poverty and with high HIV/AIDS rates, high rates of child abandonment due to death of a parent or family crisis, lack of food security, particularly deficient education systems, or easy access for children to truck routes leading to urban environments. The Applicant should propose activities both at community and national levels that are responsive to the barriers to education outlined in Section I.C.

The Applicant should identify the project's specific geographical target with consideration to those regions where existing child protection and education efforts are underway that can be effectively expanded or strengthened (See Appendix D). To make most efficient use of USDOL funds, it is highly recommended the Applicant limit proposed project activities to a few select rural and peri-urban areas in the Copperbelt, Eastern, Lusaka, Southern and/or Western Provinces. Applicants may propose alternate regions for project activities if compelling data on existing efforts and needs is provided. The exact number of communities and children to benefit from this project should be identified in collaboration with national and local authorities, and should support Zambia's current education reform efforts, as well as efforts to end child labor.

In order to *avoid duplication, enhance collaboration, expand impact, and develop synergies*, the cooperative agreement awardee (hereafter referred to as ''Grantee'') should work cooperatively with Zambian stakeholders in developing project interventions. The MOE is the lead ministry for this initiative, but close coordination and consultation may also be required with other governmental and nongovernmental stakeholders and potential partners. Because of complex social and economic problems in Zambia and limited available resources under this award, Applicants are encouraged to implement programs complementing existing efforts and, where appropriate, replicate or enhance successful models to serve expanded numbers of children and communities.

The project shall support the goals of USDOL's Child Labor Education Initiative: (1) Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures; (2) strengthen formal and transitional education systems that encourage working children and those at risk of working to attend schools; (3) strengthen national institutions and policies on education and child labor; and (4) ensure the long-term sustainability of these efforts.

To the extent possible with limited project funds, the expected outcomes of the project in the targeted communities are to (1) measurably increase the number of children afforded educational opportunities; (2) decrease the numbers of children engaged in the worst forms of child labor; (3) lift the impediments to quality educational experiences, whether within the government education system or existing alternative options; (4) improve access to complementary services addressing children's larger health, nutrition, psychological, and parenting needs that would affect children's educational performance; (5) support improved national and local institutional capacity to provide supportive educational and social policy for vulnerable children in these communities; and (6) sustain the impact of activities at a community and national level.

Below is a summary of specific requirements to guide Applicants in the development of responses to this solicitation. Although USDOL is open to all proposals for innovative solutions to address the challenges of providing increased access to education to the target population, the Applicant must, at a minimum, propose approaches to address barriers to education in the following areas of implementation:

1. Awareness-Raising and Mobilization of Key Actors

This component aims to use awareness-raising efforts to inform and mobilize strong local and national commitment to concrete actions promoting school attendance among children engaged in or most at risk of entering the worst forms of child labor.

a. *Development of communication strategy.* The Applicant should propose an appropriate communication strategy to raise awareness and influence behavior of multiple actors regarding the importance of educating children engaged in or most at risk of entering the worst forms of child labor. The Applicant should propose key audiences and messages for awareness-raising campaigns. Proposed strategies should take into account communication methods considered to be locally effective given the literacy rates and linguistic needs of target populations. Communication strategies should also seek to increase awareness of national child labor and education policies and strategies.

b. *Increased involvement in community decision-making.* The Applicant should suggest approaches to increase parental, guardian, youth and community member understanding of current Zambian education and child labor policy and its implications for local leaders. The approach should outline methods to promote and strengthen existing decision-making infrastructures or create effective task-oriented multi-sectoral or public-private partnerships at the community and regional levels to address child labor and increase access to basic education.

2. Strengthen Government and Alternative Education Systems

Strategies to strengthen Zambian educational opportunities in selected communities should address the needs of target children, including: (1) Young children within the formal education system to prevent their dropout and entry into child labor and increase the rate of primary school completion; (2) out-of-school children of primary school age; and (3) older children of legal working age for basic education programs and/or improved job and self-employment skills. Specific strategies may vary depending on the age of the children, their former experience in the education system and community specific parameters. As part of its proposed strategies the Applicant should suggest activities in the areas listed below and, if appropriate, in other innovative areas not identified in this solicitation.

a. *Identification of beneficiaries.* The Applicant should outline criteria for identifying the number and location of target communities, interventions and the numbers of children to be targeted and the criteria used to designate targeted beneficiaries. The application should describe how the Applicant intends to collect or use existing baseline data on these beneficiaries in program development.

b. *Training and professional development for teachers.* The Applicant should identify methods for recruitment of and improvement in the

knowledge, skills, morale and professionalism of teachers in government and alternative school systems so that they may better address the education needs of the target population, especially children who have dropped out to work or have never been to school. Suggested approaches to teacher development should indicate linkages with existing teacher training institutions and programs in Zambia. Attention should be given, where relevant, to providing sustained support for and increased skills among teachers in community schools and IRI mentors.

c. *Development of curricular materials and procurement of supplies.* The Applicant should suggest approaches for developing or improving upon existing curricular materials to increase their relevance for children engaging in or at risk of engaging in the worst forms of child labor and children who have been out of school for some time or are well behind grade level. The recommended approach should assist teachers and local administrators with effectively implementing and tailoring national or existing curriculum like SPARKS used in many community schools to community specific needs. Additionally, the approach should outline potential methods for developing or acquiring school supplies necessary to implement the proposed curricula.

d. *Development of targeted vocational education programs.* The Applicant should suggest approaches to implement or enhance pre-vocational and vocational training skills for employment and self-employment that better support the needs of poor children and child heads of households. The Applicant should also suggest approaches for improving job placement or self-employment after training, where relevant, including means of ensuring that poor students can access appropriate tools and supplies to successfully implement employment initiatives.

3. Strengthen National Institutions and Policies on Education and Child Labor

This component should promote approaches to increase capacity among government institutions and civil society organizations to collect and use information, implement policies, and monitor progress towards the prevention of child labor through school retention and reintegration of children into education settings in lieu of work. Specifically, the Applicant should propose approaches to implementation in the following areas:

a. *Data collection and policy analysis.* The Applicant should suggest approaches to improve the capacity of governmental and nongovernmental organizations to collect and use data to inform education and child labor policy and to allocate resources appropriately. The Applicant should outline means of strengthening the capacity of government and key civil society and community organizations to monitor and follow up on data collected regarding the education of child laborers and children at risk of entering the worst forms of child labor. The approach should take into consideration current efforts of the Ministries of Education and Labor, and suggest ways to complement and strengthen current government and nongovernmental organization activities.

b. *Strengthening local capacity to implement decentralization.* The Applicant should identify major institutions and individuals to be targeted and suggest specific approaches to build the management skills and capacity of local educational authorities and stakeholders to implement MOE's decentralization strategy. As part of this approach the Applicant should propose means of improving linkages among these educational authorities. The Applicant may also include strategies to build the capacity of community members to oversee community schools.

c. *Facilitation of inter-institutional coordination.* The Applicant should suggest means for facilitating and enhancing inter-institutional coordination and capacity building of current networks among and between government ministries and nongovernmental organizations working to improve the education of Zambia's most vulnerable children. The Applicant should identify expected outcomes from improved coordination, in the realms of improved implementation of existing policies and laws on school attendance and child labor in target areas of project intervention; coordinated planning, resource mobilization, and distribution of resources; and/or further identification, development and expansion of models for improving the educational outcomes of children engaged in or at risk of entering the worst forms of child labor.

4. Resource Mobilization

This component will build capacity to mobilize resources to improve government and community schools and other alternative educational programs.

a. *Resource linkages to better support children, families and communities.* The Applicant should suggest means for mobilizing resources to assist poor families and communities to pay school costs and support the non-education specific needs of children that are barriers to learning, such as malnutrition and health problems.

b. *Improving access to and distribution of national and non-public resources.* The Applicant should suggest an approach for efficient delivery of appropriate existing government and donor resources to target communities. The Applicant should include approaches to building the capacity of advocacy networks such as CHIN and ZCSS to effectively communicate the needs of local communities to national infrastructures and ensure they are distributed in effective and fair ways.

In implementing the proposed statement of work, the Applicant should design approaches that encourage sustainability of impact on individuals, organizations and system-wide. For individual children and their families this would mean a positive and enduring change in their life conditions as a result of project interventions. At the level of organizations and systems, sustained impact would involve continued commitment and ability to maintain outcomes generated by the project, such as policy changes and implementation, as long as they are still needed.

B. Deliverables

In addition to meeting the above requirements, the Grantee will also be expected to monitor the implementation of the program, report to USDOL on a quarterly basis, and evaluate program results. The grant will include funds to plan, implement and evaluate programs and activities, conduct various studies pertinent to project implementation, and to establish education baselines to measure program results. Corresponding indicators of performance will also be developed by the Grantee and approved by USDOL. Unless otherwise indicated, the Grantee must submit copies of all required reports to ILAB by the specified due dates. Other documents, such as project design documents, are to be submitted by mutually agreed upon deadlines.

1. Project Designs

A project document in a format to be established by ILAB in the logical framework format will be used, and will include a background/justification section, project strategy (objectives, outputs, activities, indicators, means of verification), project implementation timetable and project budget. The project design will be drawn from the application written in response to this solicitation and negotiations with ILAB

in final design. The document will also include sections that address coordination strategies, project management and sustainability. Delivery date of this document will be negotiated at the time of the award.

2. Technical and Financial Progress Reports

The Grantee must furnish a typed technical report to ILAB on a quarterly basis by 31 March, 30 June, 30 September, and 31 December. The Grantee must also furnish a separate financial report (SF 272) to ILAB on the quarterly basis mentioned above. The format for the technical progress report will be the format developed by ILAB and must contain the following information:

a. For each project objective, an accurate account of activities carried out under that objective during the reporting period;

b. An accounting of travel performed under the grant during the reporting period, including purpose of trip, persons or organizations contacted, and benefits derived;

c. A description of current problems that may impede performance, and proposed corrective action;

d. Future actions planned in support of each project objective;

e. Aggregate amount of costs incurred during the reporting period; and

f. Progress on indicators (to be reported annually).

3. Annual Work Plan

An annual work plan will be developed within two months of project award and approved by ILAB so as to ensure coordination with other relevant social actors in Zambia. Subsequent annual work plans will be delivered no later than one year after the previous one.

4. Monitoring and Evaluation Plan

A monitoring and evaluation plan will be developed, in collaboration with ILAB, including beginning and ending dates for the project, planned and actual dates for mid-term review, and final end of project evaluations. The monitoring plan will be prepared after completion of baseline surveys, including revision of indicators provided in project document, targets, and means of verification.

5. Evaluation Reports

The Grantee and the Grant Officer's Technical Representative (GOTR) will determine on a case-by-case basis whether mid-term evaluations will be conducted by an internal or external evaluation team. All final evaluations will be external in nature. The Grantee must respond to any comments and recommendations resulting from the review of the mid-term report.

C. Production of Deliverables

1. Materials Prepared Under the Grant

The Grantee must submit to ILAB all media-related and educational materials developed by it or its sub-contractors before they are reproduced, published, or used. ILAB considers that education materials include brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program. ILAB will review materials for technical accuracy. The Grantee must obtain prior approval from the Grant Officer for all materials developed or purchased under this grant. All materials produced by the Grantee must be provided to ILAB in a digital format for possible publication by ILAB.

2. Acknowledgment of USDOL Funding

In all circumstances, the following must be displayed on printed materials:

''Preparation of this item was funded by the United States Department of Labor under Cooperative Agreement No. E–9–X–X–XXXX.''

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all Grantees receiving Federal funds, including State and local governments and recipients of Federal research grants, must clearly state:

a. The percentage of the total costs of the program or project that will be financed with Federal money;

b. The dollar amount of Federal funds for the project or program; and

c. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

In consultation with ILAB, USDOL will be acknowledged in one of the following ways:

a. The USDOL logo may be applied to USDOL funded material prepared for worldwide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The Grantee will consult with USDOL on whether the logo should be used on any such items prior to final draft or final preparation for distribution. In no event will the USDOL logo be placed on any item until USDOL has given the Grantee written permission to use the logo, after obtaining appropriate internal USDOL approval for use of the logo on the item.

b. If ILAB determines that the use of the logo is not appropriate and does not give written permission, the following notice must appear on the document: ''This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.''

D. Administrative Requirements

1. General

Grantee organizations are subject to applicable U.S. Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable U.S. Federal cost principles. The grant awarded under this SGA is subject to the following administrative standards and provisions, if applicable:

29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

29 CFR Part 93—New Restrictions on Lobbying.

29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

29 CFR Part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

2. Sub-Contracts

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876 as amended, 13230, 12928 and 13021 as amended, the Grantee is strongly encouraged to provide sub-contracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities.

3. Key Personnel

The Applicant shall list individual(s) who has (have) been designated as having primary responsibility for the conduct and completion of all project

work. The Applicant will submit written proof that key personnel will be available to begin work on the project no later than three weeks after award. The Grantee agrees to inform the GOTR whenever it appears impossible for these individual(s) to continue work on the project as planned. The Grantee may nominate substitute personnel and submit the nominations to the GOTR; however, the Grantee must obtain prior approval from the Grant Officer for all key personnel. If the Grant Officer is unable to approve the personnel change, he/she reserves the right to terminate the grant.

4. Encumbrance of Grant Funds

Grant funds may not be encumbered/obligated by the Grantee before or after the grant period of performance. Encumbrances/obligations outstanding as of the end of the grant period may be liquidated (paid out) after the end of the grant period. Such encumbrances/obligations shall involve only specified commitments for which a need existed during the grant period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the Grantee's purchasing procedures and incurred within the grant period. All encumbrances/obligations incurred during the grant period shall be liquidated within 90 days after the end of the grant period, if practicable.

5. Site Visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the Grantee or a sub-contractor(s) under this grant, the Grantee shall provide and shall require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of Government representatives in the performance of their duties. All site visits and evaluations shall be performed in a manner that will not unduly delay the work.

V. Review and Selection of Applications for Award

A. The Review Process

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. Each complete application will be objectively rated by a technical panel against the criteria described in this announcement. Applicants are advised that panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select a Grantee on the basis of the initial application submission; or, the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified Applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of applications, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make final selection determination based on panel findings and consideration for factors that may be most advantageous to the Government, such as geographic distribution of the competitive applications, cost, the availability of funds and other factors. The Grant Officer's determination for award under this SGA is final.

Note: Selection of an organization as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant is awarded, USDOL may enter into negotiations about such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

B. Rating Criteria and Selection

The technical panel will review applications against the various criteria on the basis of 100 points with an additional five points available for non-federal or leveraged resources.

The factors are presented in the order of emphasis that they will receive.

1. Approach, Understanding of the Issue, and Budget Plan (40 points)

a. *Overview.* This section of the application must explain:

1. The Applicant's proposed innovative methods for performing all the specific areas of work requirements presented in this solicitation.

2. The expected outcomes over the period of performance for each of the tasks; and

3. The approach for producing the expected outcomes.

The Applicant should describe in detail the proposed approach to comply with each requirement in Section IV.A of this solicitation, including all tasks and methods to be utilized to implement the project. Also, the Applicant should explain the rationale for using this approach and any specific criteria to be used in decision-making. In addition, this section of the application should demonstrate the Applicant's thorough knowledge and understanding of the issues involved in providing education to children engaged in or at risk of engaging in the worst forms of child labor; best-practice solutions to address their needs; and the implementing environment in Zambia.

b. *Implementation Plan.* The Applicant must submit an implementation plan, preferably with a visual such as a Gantt chart, for the project in Zambia. The implementation plan should list the outcomes, objectives and activities during the life of the project, and scheduling of time and staff starting with the execution of the grant and ending with the final report. In describing the implementation plan, the Applicant should address the following points:

1. Explain how appropriate awareness-raising and training activities and materials will be developed.

2. Identify criteria to be used in selecting communities to be served and explain planned community specific activities and how each relates to the overall development objective of reducing child labor through education.

3. Demonstrate how the organization will strengthen national institutions and policies on improving educational access for children engaged in or at risk of engaging in the worst forms of child labor.

4. Describe the use of existing or potential infrastructure and activities to implement the project. The Applicant should indicate proposed links with government, civil society leaders, educators, and other significant local actors to meet the educational and related needs of the target population to be served.

5. Demonstrate how the organization would build national and local capacity to ensure the impact of project efforts to reduce child labor through the provision of education are sustained after the grant's completion.

c. *Budget Plan.* The Applicant must develop a country-specific budget of up to US $2 million for the project. This section of the application should explain the costs for performing all of the requirements presented in this solicitation and for producing all required reports and other deliverables presented in this solicitation; costs must include labor, equipment, travel, and other related costs. Preference may be given to applicants with low administrative costs.

d. *Management and Staff Loading Plan.* This section must also include a management and staff loading plan. The management plan should include the following:

1. A project organization chart and accompanying narrative which differentiates between elements of the Applicant's staff and sub-contractors or consultants who will be retained;

2. A description of the functional relationship between elements of the project's organization;

3. The identity of the individual responsible for project management and the lines of authority between this individual and other elements of the project; and

4. A description of how the organization will systematically monitor and report on project performance to measure the achievement of project objectives.

The staff loading plan should identify all key tasks and the person-days required to complete each task. Labor estimates for each task should be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks should be charted to show time required to perform them by months or weeks.

This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section III of this solicitation.

2. Experience and Qualifications of the Organization (35 points)

The evaluation criteria in this category are as follows:

a. The organization applying for the award has international experience implementing basic, transitional, and vocational education programs that address issues of access, quality, and policy reform for vulnerable children including children engaged in or at risk of the worst forms of child labor in Zambia or neighboring countries.

b. The organization has a field presence in Zambia, or in the region, or could rapidly establish an office in Zambia that gives it the capability to work directly with government ministries, educators, civil society leaders, and other local faith-based or community organization; the organization can document that it has already established relations of this nature in the target country or can show that it has the capacity to readily establish such relations.

c. The organization has experience working with, or can show it has the ability to work with U.N. and other multilateral and bilateral donor organizations.

The application should include information about previous grants or contracts relevant to this solicitation including:

1. The organization for which the work was done;

2. A contact person in that organization with their current phone number;

3. The dollar value of the grant, contract, or cooperative agreement for the project;

4. The time frame and professional effort involved in the project;

5. A brief summary of the work performed; and

6. A brief summary of accomplishments.

This information on previous grants and contracts shall be provided in appendices and will *not* count in the 25-page maximum page requirement.

3. Experience and Qualifications of Key Personnel (25 points)

This section of the application must include sufficient information to judge the quality and competence of staff proposed to be assigned to the project to assure that they meet the required qualifications. Successful performance of the proposed work depends heavily on the qualifications of the individuals committed to the project. Accordingly, in its evaluation of the Applicant's application, USDOL will place emphasis on the Applicant's commitment of personnel qualified for the work involved in accomplishing the assigned tasks. Information provided on the experience and educational background of personnel should indicate the following:

a. The identity of key personnel assigned to the project. ''Key personnel'' are staff who are essential to the successful operation of the project and completion of the proposed work and, therefore, may not be replaced or have hours reduced without the approval of the Grant Officer.

b. The educational background and experience of all staff to be assigned to the project.

c. The special capabilities of staff that demonstrate prior experience in organizing, managing and performing similar efforts.

d. The current employment status of staff and availability for this project. The Applicant should also indicate whether the proposed work will be performed by persons currently employed or is dependent upon planned recruitment or sub-contracting. Note that management and professional technical staff members comprising the Applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance are proposed, organizational control should be clearly delineated to ensure responsiveness to the needs of USDOL. Key personnel must sign letters of agreement to serve on the project, and indicate availability to commence work within three weeks of grant award.

The following information must be furnished:

a. The Applicant should designate a Program Director (Key Personnel) to oversee the project and be responsible for implementation of the requirements of the grant. The Program Director must have a minimum of three years of professional experience in a leadership role in implementation of complex basic education programs in developing countries in areas such as education policy; improving educational quality and access; teacher training and materials development; educational assessment of disadvantaged students; development of community participation in the improvement of basic education for children engaging in or most at risk of engaging in the worst forms of child labor (including children affected by HIV/AIDS); and monitoring and evaluation of basic education projects. Points will be given for candidates with additional years of experience. Preferred candidates will also have knowledge of child labor issues, and experience in the development of transitional, formal, and vocational education of children removed from child labor and/or victims of the worst forms of child labor.

b. The Applicant should designate an Education Specialist (Key Personnel) who will provide leadership in developing the technical aspects of this project in collaboration with the Project Director. This person must have at least three years experience in basic education projects in developing countries and for highly vulnerable children due to poverty and HIV/AIDS including in areas such as student assessment, teacher training, educational materials development, educational management, and educational monitoring and information systems. This person must have experience in working successfully with ministries of education, networks of educators, employers' and worker associations or comparable entities. Additional experience with child labor, the impact of HIV/AIDS, and education monitoring and evaluation is an asset.

c. The Applicant should specify other personnel proposed to carry out the requirements of this solicitation.

d. The Applicant should include a description of the roles and responsibilities of all personnel proposed for this project and a resume for each professional person to be assigned to the program. Resumes should be attached in an appendix. At a minimum, each resume should include: the individual's current employment status and previous work experience, including position title, duties performed, dates in position, and employing organizations and educational background. Duties should be clearly defined in terms of role performed, *e.g.,* manager, team leader, consultant, etc. Indicate whether the individual is currently employed by the Applicant, and (if so) for how long.

4. Leverage of Grant Funding (5 points)

The Department will give up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the dollar amount, size and scope of the application. These programs will not be financed by the project, but can complement and enhance project objectives. The Applicant may include any leveraging or co-funding anticipated. To be eligible for the additional points in the criterion, the Applicant must list the source(s) of funds, the nature, and possible activities anticipated with these funds under this grant and any partnerships, linkages or coordination of activities, cooperative funding, *etc.*

Signed at Washington, DC, this 12th day of June, 2002.

Lawrence J. Kuss,

Grant Officer.

Appendix A: SF 424—Application Form.
Appendix B: SF 424A—Budget Information Form.
Appendix C: Background Information on USDOL-Funded Projects in Zambia.
Appendix D: Zambian Implementing Environment and Key Institutions and Organizations Addressing the Education of Child Laborers.
Appendix E: Background Material Available Electronically and in Hard Copy (upon request).

BILLING CODE 4510–28–P

Appendix A: SF 424 - Application Form.

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX "A"

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name, telephone number and fax number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

□□-□□□□□□□

7. TYPE OF APPLICANT: (enter appropriate letter in box) □

A. State
B. County
C. Municipa
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): □ □

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

□□-□□□

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
b. Applicant	$ .00	DATE _____
		b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
		☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION 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. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

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APPENDIX B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

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Note: Use Column A to record funds requested for the initial period of performance (*i.e.* 12 months, 18 months, etc.); Column B to record changes to Column A (*i.e.* requests for additional funds or line item changes; and Column C to record the totals (A plus B).

Instructions for Part II—Budget Information

Section A—Budget Summary by Categories

1. *Personnel:* Show salaries to be paid for project personnel which you are required to provide with W2 forms.

2. *Fringe Benefits:* Indicate the rate and amount of fringe benefits.

3. *Travel:* Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC, for project director or designee.

4. *Equipment:* Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.

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/grants.

7. *Other:* Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. *Total, Direct Costs:* Add lines 1 through 7.

9. *Indirect Costs:* Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. *Training /Stipend Cost:* (If allowable).

11. *Total Federal funds Requested:* Show total of lines 8 through 10.

Section B—Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

Note: Please include a detailed cost analysis of each line item.

Appendix C: Background Information on USDOL-Funded Projects in Zambia

The United States Department of Labor (USDOL) has funded four projects to address child labor in Zambia, including:

Statistical Information and Monitoring Programme on Child Labour: Zambia (1999, US $289,000)—In collaboration with the International Labor Organization's Statistical Information and Monitoring Program on Child Labor (SIMPOC), Zambia's Central Statistical Office (CSO) conducted the 1999 Child Labor Survey in 8,000 households to increase the available base of data on child labor (the final report can be accessed through the Internet at *http://132.236.108.39:8050/public/english/standards/ipec/simpoc/zambia/zambia.pdf*). The survey report recommended the Copperbelt, Eastern, Northern, and Southern Provinces as priority areas for further information and mobilization campaigns. The project assisted in strengthening local capacity to collect and analyze data on child labor. The CSO is currently working to develop a database to store the relevant information.

National Programme on the Elimination of Child Labour in Zambia (1999, US $630,000)—This program seeks progressive elimination of child labor, especially its worst forms, with a focus on prevention, withdrawal, rehabilitation, and provision of alternatives for working children. It aims to strengthen government capacity to address child labor through the development of a national plan of action, review of national legislation in light of international standards, and activities in collaboration with ministries such as the Ministry of Sports, Youth and Community Developments, Ministry of Labor and Social Services and MOE (*See* Appendix D). The program aims to withdraw 1,400 children from hazardous and exploitative work in prostitution, domestic service, quarry mines, and on the streets. Withdrawn children are provided education through transitional classes or placement in government or community schools. Some families are provided income-generating opportunities. The program supports the capacity of nongovernmental organizations to provide services to working children and their families primarily in the Lusaka and Copperbelt provinces. As of March 2002, 434 children have been prevented from entering work and 559 children have been withdrawn from hazardous work and provided educational opportunities. Direct action programs are carried out by nongovernmental organizations including: Anglican Street Children Project, Association for the Restoration of Orphans and Street Children, Jesus Cares Ministries, Young Women's Christian Association, Women Finance Cooperative of Zambia, Zambia Children Education Foundation, Zambian Congress of Trade Unions, and Zambia Federation of Employers. A National Steering Committee on Child Labor was established in September 2000 as part of the program that includes committee members (MLSS, MSYCD, MOE, CHIN, Community Youth Concern, UNICEF, Permanent Human Rights Commission, Christian Council of Zambia, and UNESCO) and representatives from employers and workers groups, NGOs, academics and the media.

Prevention, Withdrawal, and Rehabilitation of Children Engaged in Hazardous Work in the Commercial Agriculture Sector in Africa (2000, US $630,000 for Zambia)—One of five participating countries, Zambia seeks to withdraw at least 1,200 children from the worst forms of labor in the commercial cotton and maize production sectors and prevent 3,000 children from entering this market. Withdrawn children are provided basic education and vocational training, and select families are provided income-generating activities. The program seeks to strengthen governmental, nongovernmental, community, employers', and workers' organizations' capacity to identify and eliminate hazardous child labor in plantations. A baseline survey of the agricultural sector is currently being conducted. Project activities will take place in the Eastern, Southern, and Central Provinces.

HIV/AIDS and Child Labour in Sub-Saharan Africa (2001, US $306,000 total)—One of four countries participating in this regional SIMPOC project, Zambia seeks to increase qualitative and quantitative data on the relationship between HIV/AIDS and child labor. Potential target areas for Rapid Assessment research in Zambia include the Copperbelt, Eastern, and Lusaka Provinces.

Appendix D: Zambian Implementing Environment and Key Institutions and Organizations Addressing the Education of Child Laborers

The following section addresses areas of policy and legislation and provides a brief description of key organizations involved in child labor. The information listed here is not exhaustive of the organizations or activities addressing the educational needs of child laborers in Zambia. In considering partnerships, Applicants should not limit themselves only to organizations listed below.

Child labor in Zambia is set in a complex socio-economic situation marked by a deteriorated economy, pervasive poverty, and the HIV/AIDS pandemic that affects all of Zambian society. Successfully addressing the needs of working children and those at risk of engaging in the worst forms of child labor must take into account these larger forces. A number of key Zambian government ministries, international donors, national NGOs and community-based organizations have undertaken approaches to address the above stated problems, with an ultimate aim of improving the lives of the orphaned and vulnerable children who are most at risk of engaging in the worst forms of child labor. Some of these key national-level policy activities include the following:

The National Poverty Reduction Action Plan—The Zambian government began formulating a National Poverty Reduction Action Plan in 1998 that spells out macroeconomic, structural and social plans to reduce poverty levels from 72.9 percent to 50 percent during the period 2000 to 2004. The Action Plan identifies several key national priority development areas including a strategy for meeting the human resource development needs of children and youth by increasing access and quality of basic education and skills training. Other strategies call for achieving broad based economic growth through agriculture and rural development, and increasing productivity of micro-enterprises in the informal and rural sectors. The Ministry of Finance and Economic Development has also completed its Interim Poverty Reduction Strategy Paper, which proposes poverty reduction interventions in all economic and social sectors to achieve sustainable economic growth and employment creation. It recognizes that declining economic conditions contribute to the prevalence of child labor in Zambia.

Child Labor Law—Zambia ratified ILO Convention 138 on the Minimum Age in 1976, the United Nations Convention of the Rights of the Child in 1991, and ILO Convention 182 on the Worst Forms of Child Labor in 2001. Zambian laws pertinent to child labor are somewhat inconsistent and no comprehensive child labor law exists. The Zambian Constitution (1991) addresses the protection of young persons from exploitation and forced labor and defines a young person as anyone under the age of 15. However, the Employment of Children and Young Persons Act (1933) defines a child as anyone under the age of 14 years, and establishes 14 as the minimum age for employment. Numerous laws make mention of children's rights, and several, including the Labor and Industrial Relations Act and Employment Act, pertain to working children. However, children engaged in subsistence agriculture, domestic service or the informal sector are not covered by law. Though there are penalties in the case of illegal employment of a child or young person, there have been no prosecutions for violations. The Ministry of Labor and Social Security has taken the lead in reviewing labor laws and has made recommendations for harmonization of legislation. It found that while the issue of child labor is sufficiently embraced, the multitude of laws are confusing and impair effective enforcement. Additionally, enforcement capacity is weak and does not reach the informal sector where child labor is predominant.

Education Reform—The Zambian government continues to reaffirm its commitment to the *Educating Our Future* policy of 1996, which strives to achieve universal education on all levels by 2015. The current implementation focus is on the provision of basic education and the Ministry of Education has been working to expand education access for all children through far-reaching education reform. A key program promoting this objective is the Basic Education Sub-sector Investment Program (BESSIP) that began in 1999. With the assistance of the international donor community, BESSIP seeks to improve quality and relevance of education, and specifically decentralizes more management and personnel decisions to the provinces. Decentralization will require that education boards be established in all districts and the MOE will transfer power to their boards. Currently, the MOE is piloting decentralization efforts in four regions: the Copperbelt, Eastern, Northern, and Western Provinces. BESSIP also addresses teacher training, curriculum review, educational material development and distribution, and the building of schools. Among BESSIP's nine components is the Equity and Gender Sub-program which supports improved educational access and monitoring of the educational performance of vulnerable children. Other programs include the Program for the Advancement of Girls' Education (PAGE), supported by USAID, underway in the Southern Province.

Alternative school activities have developed to meet the needs of vulnerable children who are not attending formal school. An estimated 900 schools independent from the existing government structures have been established throughout Zambia that are organized and managed by communities. Some 700 of these community schools serving over 75,000 children have been registered with the Zambian Community School Secretariat, having met certain criteria and standards. These schools do not require school fees of the children, Parent Teacher Association fees, or impose other requirements such as school uniforms or materials that can hamper the poorest children from attending government schools. Another alternative initiative is the Interactive Radio Instruction (IRI) program for out-of-school children launched by the MOE through its Educational Broadcasting Service in 2000. Broadcasting lessons daily, the program has grown to over 350 centers throughout Zambia that reach an estimated 12,000 children. Classes are led by a volunteer mentor identified by the local community who is literate. Lesson plans for Grades 1 and 2 have been piloted and plans for Grade 3 are currently under development.

The Zambian government also provides financial and other support to the most vulnerable children—orphans, street children, children who are poor, out-of-school and working, girls, and children with disabilities. The BESSIP Bursary Scheme and the Zambian Education Capacity Building Program Bursary Scheme (supported by the European Union) pays for the educational expenses of vulnerable children as a way of alleviating some of the problems they face in buying school requisites, uniforms, and payment of user fees. The number of bursaries given a school is decided on in collaboration between a district's education and social welfare authorities and financial compensation goes towards funding children's placements in government or community schools.

A number of government ministries, international donor organizations, national NGOs, and community-based organizations have developed approaches to address barriers to education of child laborers in Zambia. The following are brief descriptions of the organizations and their activities in relation to child labor:

National Government Ministries

There are four separate ministries charged with protecting and providing for the welfare of vulnerable children. They are:

Ministry of Labor and Social Security (MLSS)

The MLSS has overall responsibility for the protection and welfare of workers, in collaboration with trade unions and employer groups. It is charged with enforcement of legislation. The MLSS participates significantly in implementing the objectives of the ILO/IPEC National Program on the Elimination of Child Labor and has established a Child Labor Unit in the MLSS. Program activities focus on strengthening the capacity of the MLSS to monitor, control and prevent child labor in collaboration with other social partners. Labor inspectors have been trained to act against the worst forms of child labor. As mentioned above, the MLSS has undertaken a legislative and policy review of child labor. MLSS has proposed establishing a database to collect information centrally about children removed from work, however, this has yet to be developed.

Ministry of Community Development and Social Services (MCDSS)

The MCDSS is mandated to administer a number of programs providing welfare and support services to children in difficult circumstances, such as abandoned children or those living on the streets. Children are provided food and temporary shelter through collaboration with other government ministries, NGOs, community- and faith-based organizations. The Department of Social Welfare implements the Public Welfare Assistance Scheme, which seeks to increase the quality, quantity and necessary resources of community-based initiatives focused on improving the circumstances of vulnerable children. District social welfare officers, in collaboration with district education authorities, participate in the distribution of the BESSIP Bursary Scheme. An alternative ''community'' bursary scheme is being piloted, where instead of providing financial assistance for individual children, a community bursary would offer a school a grant to achieve certain targets, such as higher attendance levels. Payments would be made if targets were met. MCDSS staff members collaborate with the MLSS' Child Labor Unit.

Ministry of Sport, Youth, and Child Development (MSYCD)

The MSYCD formulates policy on the protection, development, and welfare of children. It is responsible for overseeing the enforcement of legislation on the rights of the child and implementing the National Program of Action for Children in Zambia of 1994. The Ministry's Department of Child Affairs' major functions are to advocate for the rights of the child, organize government and nongovernmental programs related to the United Nations Convention on the Rights of the Child, and coordinate aid to orphans and vulnerable children. Some resources are available to help community-based organizations in rural areas on an emergency basis. MSYCD staff members collaborate with the MLSS' Child Labor Unit.

Ministry of Education (MOE)

The MOE bears the full mandate of providing education to Zambian society. The Ministry's Special Education Inspectorate manages all educational programs, such as skills training centers for children with special learning needs, including those for child laborers. The Special Education Inspectorate collaborates closely with ILO/IPEC and, as a component of the National Program on the Elimination of Child Labor, will carry out sensitization training of MOE staff to issues of child labor, policy and legislative review, and building monitoring capacity. Current pilot activities target a limited number of district education officers, school heads and representatives of Parent Teacher Associations in Lusaka Province. ''Transitional classes'' will be introduced in five government schools where former child laborers will participate in a learning program before they are mainstreamed into

the formal education system. School authorities will develop curriculum and methods appropriate for child laborers to be used in government schools and by NGOs working with former child workers, to ensure that children remain interested in learning and that their progress can be monitored. The approach calls for close collaboration between NGOs, school authorities, counselors, and former child laborers. The MOE has begun to review education laws and policies to recommend that laws are harmonized with child labor laws; their findings will be disseminated to all stakeholders for feedback.

International Donors in Zambia

International Labor Organization's International Program on the Elimination of Child Labor (ILO/IPEC)

See Appendix C.

United Nations International Children's Emergency Fund (UNICEF)

UNICEF has a long working history in Zambia and is the lead donor agency in coordinating child assistance and development needs. The Child Protection Program is taking a central role in the 2002–2006 UNICEF/Government of Zambia County Program of Cooperation in order to support and promote the progressive realization of the rights of children and women to protection, especially for the most vulnerable. The program's initiatives are designed to strengthen community and household capacities to respond to the rapidly increasing number of orphans and vulnerable children.

United States Agency for International Development (USAID)

One of USAID's primary activities has been in working with the MOE and its partners to develop BESSIP into a comprehensive, transparent, decentralized system of delivering quality basic education, and in particular to develop an equitable education system, with a special emphasis on increasing access for girls. One such MOE initiative supported by USAID is PAGE. Another is the Community Supporting Health, HIV/AIDS, Nutrition, Gender and Equity Education in Schools (CHANGES) program in the Eastern and Southern Provinces that provides technical support to the equity and gender, HIV/AIDS education and school health and nutrition components of BESSIP. USAID also funds the Strengthening Community Partnerships for the Employment of Orphans and Vulnerable Children (SCOPE OVC) program that provides grants in the Eastern, Central, Lusaka, Southern and Western Provinces to boost existing community driven programs, sets up district committees to advocate for orphans and vulnerable children and provides linkages to partner organizations in districts. In an effort to facilitate coordination and share information about educational programs in Zambia, an Implementation and Advisory Committee on education programs was established in early 2002 with representation of nongovernmental and government officials implementing or overseeing educational programs.

National Nongovernmental Organizations

Children in Need Network (CHIN)

Formally organized with the support of UNICEF in 1995, CHIN is a network of over 70 nongovernmental, community-based organizations, and two government departments—MSYCD and MCDSS—committed to assisting children in need found largely in the Lusaka, Copperbelt, Eastern, and Southern Provinces. CHIN's mission is to strengthen the ability of families and communities to protect and promote the welfare of children in need in Zambia, and prioritizes work to assist HIV/AIDS orphans, street children, and abused children. CHIN provides members with information and training to strengthen institutional capacity, facilitates networking, and works to raise awareness on the needs and rights of children with the government and public at-large. CHIN developed a communiqué that was used to inform the government about ILO Convention 182 on the Worst Forms of Child Labor during deliberations about ratification. CHIN conducts research and data collection on issues pertaining to orphans and vulnerable children, making its findings available to the public, and advocating for improvements in children's lives.

Zambian Community School Secretariat (ZCSS)

The ZCSS was formed in 1997 with a mission to serve as a unified voice on behalf of community schools and to develop communities into self-sustaining providers of quality education to vulnerable children. ZCSS plays a lead role in formulating policy; coordinating activities and programs in community schools for various stakeholders; advocating for the rights of orphans and vulnerable children, especially girls, to educational services; setting and monitoring standards; building the capacity of teachers and other educational leaders; and mobilizing resources for community schools. Currently, 700 community schools are registered with ZCSS and serve over 75,000 children. ZCSS developed the SPARKS (School, Participation, Access and Relevant Knowledge) curriculum used in many community schools, which condenses the seven-year curriculum of government schools into four years in order to help children who have fallen behind their peers to catch up. In 1998, ZCSS signed a Memorandum of Agreement in which the MOE pledged to assist community schools to access funds, learning materials, teacher-training programs, and provide other support to ZCSS in the provinces. Focal point persons were appointed in all provinces, with the Chief Inspector of Schools serving as the national contact for community schools within the MOE, and community schools have been linked with and received some benefit from the BESSIP Equity and Gender Sub-program. ZCSS has also established a database to track information about its schools and students. Among the family of community schools, one group that has established an effective model for providing quality education is the Zambian Open Community Schools, an umbrella body for 26 community schools in the Lusaka region.

Local NGOs, Community- and Faith-Based Organizations (Including Provinces of Operation and Children Targeted for Services)

- *Anglican Children's Project,* Lusaka—street children and child prostitutes
- *Association for the Restoration of Orphans and Street Children (AROS),* Copperbelt—street children and child prostitutes
- *Children in Distress Project (CINDI),* Southern, Copperbelt, Eastern and Lusaka—orphans
- *Development Aid from People to People (DAPP) Children's Town,* Central—street children
- *Fountain of Hope,* Lusaka—street children
- *Jesus Cares Ministry,* Lusaka—child laborers in quarrying and mining
- *Movement of Community Action for the Prevention & Protection of Young People Against Poverty, Destitution, Diseases and Exploitation (MAPODE),* Lusaka—child prostitutes and victims of trafficking
- *Tasintha,* Lusaka—child prostitutes and victims of trafficking
- *Young Women's Christian Association (YWCA),* Copperbelt—street children
- *Zambian Children Education Foundation,* Lusaka—child domestic workers and other vulnerable children
- *Zambian Red Cross Society*, Lusaka—street children

Appendix E: Background Material Available Electronically and in Hard Copy (Upon Request)

1. 1999 Child Labor Survey in Zambia, *http://132.236.108.39:8050/public/english/standards/ipec/simpoc/zambia/zambia.pdf.*

2. Orphans and Vulnerable Children: A Situation Analysis, Zambia 1999. Joint USAID/UNICEF/SIDA Study Fund Project, November 1999.

3. Document on file at USDOL ''HIV/AIDS and Child Labour in Sub-Saharan Africa'' (Geneva: ILO, April 2001).

4. Document on file at USDOL ''Prevention, Withdrawal and Rehabilitation of Children in Hazardous Work in the Commercial Agriculture Sector in Africa-Country Annex for Zambia'' (Geneva: ILO, 2000).

5. Document on file at USDOL ''National Programme on the Elimination of Child Labor in Zambia'' (Geneva: ILO, 1999).

Hard copies are available from Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), e-mail: *harvey-lisa@dol.gov.*

[FR Doc. 02–15302 Filed 6–17–02; 8:45 am]

BILLING CODE 4510–28–C

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 28, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 28, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 29th day of April, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 04/29/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,404	Stream International (Comp)	Dallas, TX	04/01/2002	Tier 1 & 2 Technical Support.
41,405	Riley Industry (USWA)	Provo, UT	04/08/2002	Pitch for Aluminum.
41,406	Siemens ICN (Wrks)	Lake Mary, FL	04/02/2002	Telephone Equipment/High-Speed Internet.
41,407	Leviton Manufacturing Co (Wrks)	El Paso, TX	03/28/2002	Plugs and Connectors.
41,408	Maine Brush LLC (Comp)	Lisbon Falls, ME	04/19/2002	Brushes—Artistic and Cosmetic.
41,409	Wellman, Inc. (Comp)	Fayetteville, NC	04/22/2002	Polyester Yarn.
41,410	Wellman, Inc. (Comp)	Marion, SC	04/22/2002	Polyester Staple Fiber.
41,411	Holiday Products, Inc. (Comp)	El Paso, TX	04/12/2002	Distribution Service—Christmas Article.
41,412	York International (USWA)	Elyria, OH	04/18/2002	Heating Installation and AC Products.
41,413	T and T Land and Timber (Comp)	Rexford, MT	04/02/2002	Logs.
41,414	Honeywell, Inc. (Comp)	Nevada, MO	04/18/2002	Air Filters, Metal Plastic Fuel Filters.
41,415	Electronic Data Systems (Wrks)	Maynard, MA	03/12/2002	Software Development and Maintenance.
41,416	Siemens VDO Automotive (Wrks)	Auburn, IN	03/29/2002	Electronic Printed Circuit Boards.
41,417	FlexPrint (Wrks)	Moorestown, NJ	03/29/2002	Printing and Lamination To Fill Perfume.
41,418	RHO Industries (Comp)	Buffalo, NY	03/18/2002	Chat PC Interlinings.
41,419	BioMerieux (Wrks)	Oklahoma City, OK	04/01/2002	Analytical/Detection Software Equipment.
41,420	Cawood Manufacturing (Wrks)	Sneedville, TN	04/12/2002	Upholstrey for Living Room Suites.
41,421	American Dawn, Inc. (Wrks)	Compton, CA	04/01/2002	Textile Production.
41,422	McCain Foods USA, Inc. (Wrks)	Appleton, WI	03/10/2002	Food Appetizers.
41,423	DDG, Inc./Windsurfing (Comp)	Hood River, OR	03/15/2002	Wind-Surfing Goods.
41,424	IBIDEN Graphite Parts of Americ (Wrks)	Portland, OR	03/11/2002	Isotrophic Graphite Parts.
41,425	Tzipi, Inc. (UNITE)	Brooklyn, NY	04/08/2002	Ladies Sportswear.
41,426	Fairbrooke Enterprises (UNITE)	Carlstadt, NJ	04/08/2002	Ladies Wool Coats.
41,427	Wehadkee Yarn Mills (Comp)	Talladega, AL	03/14/2002	Bed Spreads.
41,428	Zenith Dye and Finishing (UNITE)	Paterson, NJ	04/04/2002	Dye and Finishing of Fabrics.
41,429	Concord Wire (USWA)	Worcester, MA	03/28/2002	Wire Products.
41,430	Alcatel (Wrks)	Ogdensburg, NY	02/18/2002	Telecommunications Equipment.
41,431	Sterling Fluid/Process (IBT)	White Pigeon, MI	04/01/2002	Pump Casting Molds.
41,432	Lucent Technologies/OFS (Wrks)	Sturbridge, MA	04/05/2002	Fiber Optic Fiber.
41,433	Intercraft Burnes (Comp)	Statesville, NC	04/04/2002	Decorative Photo and Certificate Frames.
41,434	Goodrich Corp. (Comp)	Spencer, WV	04/05/2002	Aircraft Evacuation Slides.
41,435	Imperial Holly Sugar (Wrks)	Hereford, TX	04/02/2002	Sugar Beet Molasses.
41,436	Corcom—A Tyco Company (Wrks)	El Paso, TX	03/21/2002	Filters and Relays.
41,437	U.S. Vanadium Corp (Comp)	Niagara Falls, NY	04/10/2002	Vanaduim Aluminium.
41,438	Alliance Machine Co (Comp)	Alliance, OH	04/05/2002	Machinery & Equipment for Steel Mills.
41,439	Shiloh Industries (Wrks)	Canton, MI	02/08/2002	Built Dies.
41,440	Jervis B. Webb Co. (USWA)	New Hudson, MI	04/09/2002	Straight Tracks, Drives, Roller Turns.
41,441	Amerock (Comp)	Rockford, IL	04/03/2002	Cabinet Hardware.
41,442	Ponderosa Pulp Products (Wrks)	Oshkosh, WI	04/04/2002	Recycled Pulp.
41,443	Carter Footwear, Inc. (Comp)	Wilkes Barre, PA	04/05/2002	Injection Molded Canvas Footwear.
41,444	Joseph Timber Co (Wrks)	Joseph, OR	03/07/2002	Lumber.
41,445	Quantegy, Inc. (Wrks)	Opelika, AL	03/21/2002	Magnetic Tape.
41,446	Duel Systems (Comp)	San Jose, CA	04/02/2002	Metal and Plastic.
41,447	Midway Machine and Tool (Wrks)	Wilkes Barre, PA	04/05/2002	Silence.
41,448	Ocwen Technology Xchange (Wrks)	Carlsbad, CA	04/03/2002	Software Web-Based Application.
41,449	Biljo, Inc (Comp)	Dublin, GA	04/11/2002	Men and Boys Apparel.
41,450	Columbia River Egg Farm (Wrks)	Rufus, OR	03/08/2002	Egg Processing.

APPENDIX—Continued

[Petitions Instituted on 04/29/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,451	Powerex, Inc (Comp)	Youngwood, PA	03/08/2002	Motor Controls, Power Supplies.
41,452	American Paper Tube (Wrks)	Port Gibson, MS	03/22/2002	Paper Tubes.
41,453	Fun-Tees, Inc, (Comp)	Concord, NC	03/19/2002	Tee-Shirts.
41,454	K and J Clothing (Wrks)	Philadelphia, PA	03/29/2002	Dresses.
41,455	Werbak, Inc. (Wrks)	Webster, MA	03/14/2002	Yarn.
41,456	New Images, Inc (Wrks)	Reidsville, NC	03/27/2002	Garment Textile Screen Printer.
41,457	Sandisk Corp. (Wrks)	Sunnyvale, CA	03/28/2002	CF Compact Flash Cards.
41,458	Ameripol Synpol Corp. (Wrks)	Odessa, TX	03/25/2002	Burodiene Rubber.
41,459	Dave Goldberg, Inc. (UNITE)	Long Island Cty, NY	04/18/2002	Swimwear.
41,460	Hoffman Enclosures (Wrks)	Anoka, MN	04/18/2002	Electrical Enclosures.
41,461	Renfro Corp. (Comp)	South Pittsburg, TN	04/08/2002	Children's Socks.
41,462	Astec Semiconductor, Inc (Wrks)	Milpitas, CA	04/04/2002	Semi-Conductor Circuits.
41,463	Knight Textile Corp (Comp)	Saluda, SC	04/19/2002	Ladies Sportswear.
41,464	Analog Devices (Wrks)	Wilmington, MA	04/12/2002	Semi-Conductor.

[FR Doc. 02–15303 Filed 6–17–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0224(2002)]

Overhead and Gantry Cranes Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comment concerning its proposal to extend OMB approval of the information-collection requirements specified by its Overhead and Gantry Cranes Standard (29 CFR 1910.179). The paperwork provisions of this standard specify requirements for: Marking the rated load of cranes; preparing, maintaining, and disclosing certification records of hook, hoist chain, and rope inspections and load test reports. The purpose of the requirements is to provide information to employees concerning tests and inspection of critical components of the crane and to provide information about the lifting limits of the crane. This information will be useful in preventing death and serious injuries by ensuring that employees operate overhead and gantry cranes within the rated loads marked on the equipment.

DATES: Submit written comments on or before August 19, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0224 (2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Overhead and Gantry Cranes Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at *http://www.osha.gov/comp-links.html,* and select ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensure that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The Standard specifies several paperwork requirements. The following sections describe who uses the information collection under each requirement, as well as how they use it. The purpose of these requirements is to prevent death and serious injuries among employees by ensuring that all critical components of the crane are inspected and tested on a periodic basis and that the crane is not used to lift loads beyond its rated capacity.

• *Marking the Rated Load (paragraphs (b)(3) and (b)(5)).* Paragraph (b)(5) requires that the rated load be plainly marked on the side of each crane. If the crane has more than one hoist, the rated load must be marked on each hoist or the load block. The manufacturer will mark the rated loads. If the crane is modified, paragraph (b)(3) requires the new rating to be determined and marked on the crane. Reports of the rated load test are also required. This function would most likely fall to the employer. Marking the rated-load capacity of a crane ensures that employers and employees will not exceed the limits of the crane, which can result in crane failure.

• *Certification Records for Hook and Hoist Chain Inspections (paragraphs (j)(2)(iii), (j)(2)(iv)).* Paragraphs (j)(2)(iii) and (j)(2)(iv) require daily and monthly inspections of hooks and hoist chains, respectively. After each monthly inspection, employers are to prepare a certification record that includes the date of the inspection, the signature of the person who performed the inspection, and the serial number, or other identifier, of the inspected hook or hoist chain. Certification records provide employers, employees, and OSHA compliance officers with assurance that the hooks and hoist chains used on cranes regulated by the Standard have been inspected as required by the Standard. These inspections help assure that the equipment is in good operating condition, hereby preventing failure of

the hooks or hoist chains during material handling. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

• *Reports of Rated Load Tests (paragraph (k)(2)).* Under this provision, employers must make readily available test reports of load-rating tests conducted under paragraph (b)(3) for modified cranes, and for hooks repaired as stated in paragraph (l)(3)(iii)(*a*) of the Standard. These reports inform the employer, employees, and OSHA compliance officers that a rated load test was performed, providing information about the capacity of the crane and the adequacy of the repaired hook. This information is used by crane operators so that they will not exceed the rated load of the crane or hook.

• *Certification Records of Rope Inspections (paragraph (m)).* Paragraph (m)(1) requires employers to inspect thoroughly all running rope is use, and do so at least once a month. In addition, rope which has been idle for at least a month must be inspected before use, as prescribed by paragraph (m)(2), and a record prepared to certify that the inspection was done. The certification records must include the inspection date, the signature of the person conducting the inspection, and the identifier of the rope inspected. Employers must keep the certification records on file and available for inspection. The certification records provide employers, employees, and OSHA compliance officers with assurance that the ropes are in good condition.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

• Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;

• The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposed to extend the Office of Management and Budget's (OMB) approval of the collection-of-information requirements specified by its Overhead and Gantry Cranes Standard (29 CFR 1910.179). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of currently approved information-collection requirement.

Title: Overhead and Gantry Cranes Standard (29 CFR 1910.179).

OMB Number: 1218–0224.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 35,000 cranes.

Frequency of Recordkeeping: On occasion; daily; monthly; semiannually.

Average Time per Response: Varies from 30 minutes (.50 hour) to 2 hours.

Total Annual Hours Requested: 360,140.

Total Annual Costs (O&M): $0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC, on June 11, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–15304 Filed 6–17–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0227(2002)]

Trucks Used Underground To Transport Explosives; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits public comment concerning its request to extend OMB approval of the information-collection requirements specified in paragraph (e) of the Underground Transportation of Explosives in Construction Standard (29 CFR 1926.903); this paragraph requires employers to inspect the trucks electrical system used to transport the explosives underground.

DATES: Submit written comments on or before August 19, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0227(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to: (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Martinez, Directorate of Policy, Office of Regulatory Analysis, OSHA, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–1953. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Underground Transportation of Explosive Standard is a available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at *http://www.osha.gov/comp-links.html* and select ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information-collection burden is correct.

The Underground Transportation of Explosives Standard (*i.e.*, ''the Standard'') specifies the following paperwork requirement, as well as the rationale for the requirement.

• *Trucks used Underground to Transport Explosives (paragraph (e)).* Paragraph (e) requires the employer to inspect weekly the truck's electrical system used to transport explosives underground. The weekly inspection is to detect any failure in the system which would constitute an electrical hazard. In addition the employer must

certify and maintain these records to show the compliance officer upon inspection.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposes to extend OMB's previous approval of the recordkeeping (paperwork) requirement specified in paragraph (e) of the Underground Transportation of Explosives Standard (29 CFR 1926.903). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of this information-collection requirement.

Type of Review: Extension of currently approved information-collection requirements.

Title: Trucks used Underground to Transport Explosives.

OMB Number: 1218–0227.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 1.

Frequency of Response: Weekly.

Total Responses: 52.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 9.

Estimated Cost (Operation and Maintenance): 0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC, on June 11, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–15305 Filed 6–17–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No.: D–10934]

Proposed Amendment to Prohibited Transaction Exemption 97–11 (PTE 97–11) for the Receipt of Certain Investment Services by Individuals for Whose Benefit Individual Retirement Accounts or Retirement Plans for Self-Employed Individuals Have Been Established or Maintained

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed amendment to PTE 97–11.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 97–11. PTE 97–11 is a class exemption that permits the receipt of services at reduced or no cost by an individual for whose benefit an individual retirement account (IRA) [1] or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from a broker-dealer, provided that the conditions of the exemption are met. The proposed amendment, if adopted, would affect individuals with beneficial interests in such plans who receive such services as well as the broker-dealers who provide such services.

DATES: If adopted, the proposed amendment would be effective as of January 1, 1998. Written comments and requests for a public hearing should be received by the Department on or before August 2, 2002.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, 200 Constitution Avenue, NW, Washington, DC 20210, (Attention: D–10934). Interested persons are also invited to submit comments and/or hearing requests to PWBA via email to *moffittb@pwba.dol.gov* or by fax to (202) 219–0204 by the end of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Allison Padams Lavigne or Mr. Christopher Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693–8540, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 97–11 (62 FR 5855, February 7, 1997 as amended, 64 FR 11042, March 8, 1999). PTE 97–11 provides relief from the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of sections 4975(a) and (b), 4975(c)(3) and 408(e)(2) of the Code by reason of section 4975(c)(1)(D), (E) and (F) of the Code.[2] The amendment to PTE 97–11 was requested in an exemption application dated September 26, 2000, filed on behalf of American Funds Distributors, Inc. (AFD), a broker-dealer registered under the Securities Exchange Act of 1934. The Department is proposing this amendment in response to AFD's application.

The application was filed pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, (August 10, 1990)).

PTE 97–11 permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained or by members of his or her family, from a broker-dealer registered under the Securities Exchange Act of 1934 pursuant to an arrangement in which the account value of, or the fees incurred for services provided to, the IRA or Keogh Plan is/are taken into account for purposes of determining eligibility to receive such services, provided that certain conditions are

[1] In Advisory Opinion 98–03A (March 6, 1998), the Department stated that a Roth IRA which satisfies the definition of an individual retirement plan contained in section 7701(a)(37)(A) of the Code is an ''individual retirement account'' described in section 408(a) of the Code. Therefore, a Roth IRA which is not an employee benefit plan covered by Title I of ERISA (except for certain Simplified Employee Pensions and Simple Retirement Accounts described in section 408(k) and 408(p) of the Code, respectively) would be covered by the relief provided in PTE 97–11, if all conditions therein are met. In this regard, the Department wishes to clarify that this proposed modification of section III(b) of PTE 97–11 would include Roth individual retirement annuities described in section 7701(a)(37)(B) of the Code.

[2] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978 (5 U.S.C. App. 1 (1996)) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

met. In the preamble to the proposal to PTE 97–11 (61 FR 39996 (1996)), the Department noted that programs in which broker-dealers offer reduced sales charges as an individual increases his purchases of investment company shares would be covered by the exemption provided that all of its conditions are satisfied. In granting PTE 97–11, the Department additionally noted in a response to a comment, that ''letters of intent'' programs in which broker-dealers offer reduced sales commissions based on the aggregate of a customer's actual purchases and anticipated purchases over a specified period of time, as agreed to by the customer, are similarly covered by the exemption. The Department also noted that this conclusion was based on the fact that under these ''letters of intent'' programs, if a customer ultimately fails to make the anticipated purchases, the broker-dealer would reinstate the sales commission on each account on a pro rata basis. Thus, the IRA or Keogh Plan would only be assessed that portion of the reinstated sales charges related to the IRA and Keogh Plan purchases.

AFD has requested an amendment to PTE 97–11 to modify the definition of the term ''IRA''. In this regard, section III(b) of PTE 97–11, as previously amended, defines the term ''IRA'' as ''an individual retirement account described in Code section 408(a) or an education individual retirement account described in section 530 of the Code.'' The exemption states further that ''[f]or purposes of the exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.''

AFD requests that the term ''IRA'' be amended to include an ''individual retirement plan'', as such term is defined in section 7701(a)(37) of the Code. In this regard, section 7701(a)(37) of the Code provides that the term ''individual retirement plan'' means ''an individual retirement account described in section 408(a)'' and ''an individual retirement annuity described in section 408(b)''. Section 408(a) of the Code, in turn, provides that, the term ''individual retirement account'' means ''a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements* * *'' In this regard, section 408(a) of the Code requires that, among other things, no part of the trust funds will be invested in life insurance contracts and that the interest of an individual in the balance in his account is nonforfeitable. Section 408(b) of the Code provides that the term ''individual retirement annuity'' means ''an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary), issued by an insurance company which meets the following requirements* * *'' In this regard, section 408(b) requires, among other things, that the annuity contract is not non-transferrable by the owner and that the entire interest of the owner is nonforfeitable.

AFD seeks to amend the definition of the ''IRA'' in PTE 97–11 in order to include Individual Retirement Annuities. AFD states that allowing annuity owners, or members of their families, to obtain reduced sales commissions from independent broker-dealers would be consistent with the conditions of PTE 97–11, and would enable individuals to receive the same advantages that PTE 97–11 affords to persons for whose benefit IRAs are maintained.

AFD states that programs offering discounted commissions for the purchase of mutual fund shares typically determine the amount of such discount by aggregating an individual's (and possibly his family's) total purchases of the funds offered by the fund ''family''. Thus, where the ''family'' also manages variable annuity separate accounts invested in mutual funds managed by the adviser to the fund ''family'', investments in the variable annuities are aggregated with other investments in mutual fund shares for purposes of determining the level of commission discounts applicable to the purchase of fund shares.[3]

AFD additionally represents that, similarly, programs offering discounted commissions for the purchase of variable annuities often determine the amount of such discount by aggregating an individual's (and possibly his family's) total investment in variable annuities offered by the ''family'' and mutual fund shares of the fund ''family''. Once the appropriate discount is determined, the reduced commission is deducted ''up front'', and the remainder is invested in the annuity contract. AFD states that, in the situations described above, the mutual funds and the variable annuities are sold by independent registered broker-dealers, who are bound to give the commission discounts by a selling group agreement with the principal underwriter.[4]

The amendment is appropriate, AFD represents, in that Individual Retirement Accounts and Individual Retirement Annuities serve the same purpose and are identical in all relevant features, including tax benefits. AFD states that although Individual Retirement Accounts and Individual Retirement Annuities use different investment vehicles to hold their respective assets, such a distinction is irrelevant for purposes of the relief provided by PTE 97–11.

Based on AFD's representations, it appears that Individual Retirement Annuities share many of the same characteristics exhibited by other investment vehicles covered by the exemption. Thus, the Department sees merit in AFD's request that the term ''IRA'' be amended to include Individual Retirement Annuities. Accordingly, the Department has determined to modify the definition of IRA contained in section III(b) of PTE 97–11 to include Individual Retirement Annuities, as such term is defined in section 408(b) of the Code. The Department notes that all of other the conditions of PTE 97–11 must be satisfied with respect to Individual Retirement Annuities, as is the case with Individual Retirement Accounts, Education IRAs and Keogh Plans covered by the exemption. In this regard, the Department notes that, among other things, all reduced sale charges offered under a variable annuity contract must be offered by a broker-dealer or its affiliate.[5]

Notice to Interested Persons

Because many participants in IRAs and Keogh Plans and broker-dealers sponsoring IRAs or Keogh Plans could

[3] AFD represents that in determining the aggregate investments of an investor in mutual fund shares held through an Individual Retirement Account, variable annuities held through an Individual Retirement Annuity would typically be included in aggregate investments (as would certain other types of retirement plan investments, such as SEPS and non-ERISA 403(b) plans.)

[4] The Department notes that where the sales charge is reduced under a letter of intent program, in the event the customer does not make the anticipated purchases and the broker-dealer reinstates the sales charge, the IRA or Keogh Plan is only assessed that portion of the of the reinstated charge related to the IRA and Keogh Plan purchases.

[5] Section II (c) of PTE 97–11 states that: ''The services offered under the (relationship brokerage) arrangement are offered by the broker-dealer (or an affiliate of the broker-dealer) in the ordinary course of the broker-dealer's business to customers who qualify for reduced or no cost services, but do not maintain IRAs or Keogh Plans with the broker-dealer.''

conceivably be considered interested persons, the only practical form of notice is publication in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) Before an exemption may be granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the IRAs and Keogh Plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of such plans.

(2) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) If granted, the proposed amendment will be applicable to a transaction only if the conditions specified in the class exemption are met.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed amendment. Comments received will be available for public inspection with the referenced application at the above address.

Proposed Amendment

Under section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), the Department proposes to amend PTE 97–11 as set forth below:

Section III(b) is amended to read: ''The term ''IRA'' means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b) or an education individual retirement account described in section 530 of the Code. For purposes of this exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.''

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–15317 Filed 6–17–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–11050, et al.]

Proposed Exemptions; Provident Mutual Life Insurance Company (Provident)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: ''*moffittb@pwba.dol.gov*'', or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Provident Mutual Life Insurance Company (Provident)

Located in Berwyn, PA

[Application No. D–11050]

Proposed Exemption

Based on the facts and representations set forth in the application, the

Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the initial issuance, by Provident, of its common stock (Provident Shares) to the conversion agent (the Conversion Agent), as stockholder of record, on behalf of any eligible policyholder of Provident (the Eligible Member), including any Eligible Member which is an employee benefit plan (within the meaning of section 3(3) of ERISA), an individual retirement annuity (within the meaning of section 408 or 408A of the Code) or a tax sheltered annuity (within the meaning of section 403(b) of the Code) (each, a Plan), including a Plan sponsored by Provident for Provident employees (a Provident Plan); (2) the exchange, by the Conversion Agent, of Provident Shares for common stock (Sponsor Class A Shares) issued by Nationwide Financial Services, Inc. (the Sponsor), or, the receipt of cash (Cash) or policy credits (Policy Credits) by an Eligible Member, in exchange for such Eligible Member's membership interest in Provident or in connection with the merger (the Merger) between Provident and the Eagle Acquisition Corporation (the Merger Sub), a wholly-owned subsidiary of the Sponsor, in accordance with the terms of a plan of conversion (the Plan of Conversion) and merger agreement (the Merger Agreement), adopted by Provident and implemented pursuant to the Pennsylvania Insurance Company Mutual-to-Stock Conversion Act, as amended, codified at 40 P.S. sections 911–A to 929–A (the Conversion Act) and the applicable provisions of the Pennsylvania Business Corporation Law of 1998.

In addition, if the exemption is granted, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt and holding, by a Provident Plan, of Sponsor Class A Shares, whose fair market value exceeds 10 percent of the value of the total assets held by such Plan.

The proposed exemption is subject to the general conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Conversion, including the Merger Agreement, is subject to approval, review and supervision by the Commissioner of Insurance of the Commonwealth of Pennsylvania (the Commissioner) and is implemented in accordance with procedural and substantive safeguards that are imposed under the laws of the Commonwealth of Pennsylvania.

(b) The Commissioner reviews the terms of the options that are provided to Eligible Members of Provident as part of such Commissioner's review of the Plan of Conversion and Merger, and approves the Plan of Conversion and Merger following a determination that such Plan of Conversion is fair and equitable to all Eligible Members. The New York Superintendent of Insurance (the Superintendent) may object to the Plan of Conversion if he or she finds that such Plan of Conversion is not fair or equitable to all New York policyholders.

(c) As part of their separate determinations, both the Commissioner and the Superintendent concur on the terms of the Plan of Conversion.

(d) Each Eligible Member has an opportunity to vote at a special meeting (the Eligible Members' Meeting) to approve the Plan of Conversion and Merger after full written disclosure is given to the Eligible Member by Provident.

(e) Any determination to receive Sponsor Class A Shares, Cash, or Policy Credits by an Eligible Member which is a Plan, pursuant to the terms of the Plan of Conversion, is made by one or more Plan fiduciaries that are independent of Provident and its affiliates and neither Provident nor any of its affiliates exercises any discretion or provides investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

(f) After each Eligible Member is allocated a fixed component equivalent to approximately 20% of Provident Shares, additional consideration is allocated to Eligible Members based on actuarial formulas that take into account each policy's contributions to the surplus and asset valuation reserve of Provident, which formulas have been approved by the Commissioner.

(g) In the case of an Eligible Member who is entitled to receive Provident Shares only upon consummation of the Merger, such Provident Shares are exchanged for Sponsor Class A Shares, Cash or Policy Credits in accordance with an election made by such Eligible Member.

(h) In the case of a Provident Plan, the independent Plan fiduciary (the Independent Fiduciary)—

(1) Votes on whether to approve or not to approve the proposed demutualization;

(2) Elects between consideration in the form of Sponsor Class A Shares, Cash or Policy Credits on behalf of such Plans;

(3) Reviews and approves Provident's allocation of Sponsor Class A Shares, Cash or Policy Credits received for the benefit of the participants and beneficiaries of the Provident Plans;

(4) Votes on Sponsor Class A Shares that are held by the Provident Plans and disposes of such shares held by the Retirement Pension Plan for Certain Home Office, Managerial and Other Employees of Provident Mutual Life Insurance Company (the Home Office Pension Plan), which exceeds the limitation of section 407(a)(2) of the Act, as soon as it is reasonably practicable, but in no event later than six months after the effective date (the Effective Date) of the Plan of Conversion and Merger;

(5) Provides the Department with a complete and detailed final report as it relates to the Provident Plans prior to the Effective Date of the demutualization; and

(6) Takes all actions that are necessary and appropriate to safeguard the interests of the Provident Plans and their participants and beneficiaries.

(i) All Eligible Members that are Plans participate in the transactions on the same basis as all Eligible Members that are not Plans.

(j) No Eligible Member pays any brokerage commissions or fees in connection with the receipt of Sponsor Class A Shares or Policy Credits or in connection with the implementation of the commission-free purchase and sale program (the Commission-Free Program).

(k) All of Provident's policyholder obligations remain in force and are not affected by the Plan of Conversion or Merger.

(l) The terms of the transactions are at least as favorable to the Plans as an arm's length transaction with an unrelated party.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term ''Provident'' means Provident Mutual Life Insurance Company and any of its affiliates as

[1] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Provident includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Provident. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.); and

(2) Any officer, director or partner in such person.

(c) The term ''Allocable Provident Shares'' means the number of Provident Shares determined in accordance with Section 3.1(c) of the Merger Agreement, representing the total number of Provident Shares that will be notionally allocated to Eligible Members in accordance with the Plan of Conversion and the ''Actuarial Contribution Memorandum'' (for purposes of allocating among Eligible Members the consideration that is actually to be distributed to Eligible Members in the form of Sponsor Class A Shares, Cash or Policy Credits). The Actuarial Contribution Memorandum sets forth the principles, assumptions and methodologies for the calculation of the Actuarial Contribution of Eligible Policies, which is the estimated past contribution of such Eligible Policy to Provident's statutory surplus and asset valuation reserve, plus the contribution that such policy is expected to make in the future, as calculated according to the principles, assumptions and methodologies set forth in the Plan of Conversion and its exhibits.

(d) The term ''Eligible Member'' means the owner of an ''eligible policy,'' as provided by the records of Provident and by its articles of incorporation and bylaws, on the adoption date of the Plan of Conversion. (An ''Eligible Policy'' is defined as a policy that is in force on the adoption date.) Provident and any of its subsidiaries will not be Eligible Members with respect to any policy that entitles the policyholder to receive consideration, unless the consideration is to be utilized in whole or in part for a plan or program funded by that policy for the benefit of participants or employees who have coverage under that plan or program. Provident may deem a person to be an Eligible Member in order to correct any immaterial administrative errors or oversights.

(e) With respect to the conversion of Provident from a mutual life insurance company to a stock insurance company (the Conversion), the term ''Policy Credit'' means consideration to be paid in the form of an increase in cash value, account value, dividend accumulations, face amount, extended term period or benefit payment, as appropriate, depending on the policy, or extension of the policy's expiration date. With respect to the Merger, the term ''Policy Credit'' means consideration to be paid in the form of an adjustment of policy values for certain policies under the Plan of Conversion.

(f) The ''Effective Date'' means the date the actual Conversion and Merger will transpire. It is expected to occur in the latter part of the third quarter in 2002, however the exact date is not known at this time.

Summary of Facts and Representations

The Parties

1. Provident, a mutual life insurance company organized under the laws of the Commonwealth of Pennsylvania, maintains its principal place of business at 1000 Chesterbrook Avenue, Berwyn, Pennsylvania. Provident was formed in 1865 and converted to a mutual insurance company in 1922 pursuant to the Pennsylvania Act of April 20, 1921. Provident's business is concentrated in life insurance products and it offers a broad range of life insurance and variable annuity products and related services to its policyholders. As of December 31, 2000, Provident and its subsidiaries had approximately $9.2 billion in assets, with $8.2 billion set aside primarily to pay future policyholder benefits. Provident had approximately $3.9 billion in general account assets and $2.8 billion in separate account assets as of December 31, 2000.

2. As a mutual life insurance company, Provident has no authorized, issued or outstanding capital stock. Pursuant to Pennsylvania law and Provident's Articles of Incorporation and By-Laws, Provident's policyholders, through the purchase of Provident's insurance policies, acquire both insurance coverage from, and membership rights in, Provident. The membership rights of policyholders consists principally of the right to vote in the election of directors of Provident and the right to share in any residual value of Provident in the event that Provident were to be liquidated. Each Provident policyholder is entitled to one vote regardless of the number or size of policies he or she holds. In this regard, Provident policyholders are entitled to vote on the Conversion.

3. Provident has a number of subsidiaries and affiliates that provide a variety of financial services, including investment management and brokerage services. Provident and its affiliates also provide a variety of fiduciary and other services to Plans described in section 3(3) of the Act and to other Plans described in section 4975(e)(1) of the Code, including Plan administration and related services, investment management services, and securities brokerage and related services. Many of the Plans to which Provident and its affiliates provide services are also Provident policyholders.

As of December 31, 2000, Provident had over 1,050 outstanding policies and contracts held in connection with Plans. These Plans include defined benefit pension plans, defined contribution plans, *i.e.,* 401(k) plans, and welfare benefit plans such as group life, short- and long-term disability, accidental death and dismemberment, and group health coverage.

Although Provident is not a party in interest with respect to any of its policyholders that are Plans merely because it has issued an insurance policy to such Plans, its provision of the foregoing services to the Plans may cause it to be considered a party in interest under section 3(14)(A) and (B) of the Act.

4. Besides issuing insurance policies and providing services to certain client Plans, Provident and its subsidiaries and affiliates sponsor three in-house Plans which are expected to receive consideration in connection with the Plan of Conversion described herein. A description of each of the affected Provident Plans is summarized in the following table:

Name of plan and type	Approximate number of participants (as of 12/31/00)	Total assets (as of 12/31/00)	Coverage
The Home Office Pension Plan (Defined Benefit)	2,231	$191,031,805	Actives, Deferred and Retirees.
Savings Plan for Certain Employees, Agents and Managers of Provident Mutual Life Insurance Company (the Savings Plan) (Defined Contribution: 401(k) & Profit Sharing).	2,636	$85,655,382	Actives, Separated and Beneficiaries.

Name of plan and type	Approximate number of participants (as of 12/31/00)	Total assets (as of 12/31/00)	Coverage
Pension Plan for Agents of Provident Mutual Life Insurance Company (the Agents Pension Plan) (Defined Contribution: Money Purchase).	1,316	$86,819,283	Actives, Separated and Beneficiaries.

EMJAY Corporation is the trustee for the Savings Plan and the Agents Pension Plan. The Home Office Pension Plan is not required to have a trustee because all funds are held under insurance contracts issued by Provident. Investment decisions for each Provident Plan are made by Provident's Benefits Committee, which serves as the Plan administrator. Members of the Benefits Committee consist of officers of Provident.

Provident's Conversion

5. Provident is considering a transaction which would allow for its conversion from a mutual life insurance company into a stock life insurance company in accordance with the requirements of the Conversion Act, as amended and as codified at 40 P.S. Sections 911–A to 929–A. It is anticipated that, in the Conversion, Eligible Members of Provident, including Plans, will initially be issued Provident Shares, or for certain other policyholders, Cash or Policy Credits in respect of the extinguishment of their membership interests in Provident. Eligible Members receiving Cash or Policy Credits in the Conversion will be those for whom the receipt of such consideration is mandatory under the Plan of Conversion and the Merger Agreement. Provident Shares issued in the Conversion will be held by the Conversion Agent on behalf of the Eligible Members.

Immediately following the Conversion, pursuant to the Merger Agreement, the Merger Sub will merge with and into Provident. In turn, Provident will become a wholly-owned subsidiary of the Sponsor.[2] Eligible Members that receive Provident Shares in the Conversion will exchange those shares for Sponsor Class A Shares or, subject to certain limitations, Cash or Policy Credits. The Sponsor Class A Shares will be registered under the Securities Exchange Act of 1934, as amended, and listed on the New York Stock Exchange.

6. Provident represents that at present, it can increase its capital primarily through earnings contributed through its operating businesses, through the issuance of surplus notes, or by divestiture of all or a portion of interests in subsidiaries or other investments. However, Provident explains that none of these methods may provide a long-term source of capital to allow the insurer to develop new businesses or provide greater stability and protection for its policyholders. Therefore, Provident believes that its proposed Conversion and affiliation with the Sponsor will be in the best interests of its policyholders (including its Plan policyholders) because it will—

- Help assure the continuity of Provident's life insurance and other business, enhance Provident's competitiveness, and generate significant opportunities for improved financial performance;
- Provide Provident with greater flexibility to obtain capital as compared to the current mutual life insurance structure, and significantly enhance Provident's ability to become a financially-stronger organization with greater resources to back its obligations to policyholders;
- Provide Provident with increased flexibility to fund the growth of existing product lines, expand into new product lines, and take advantage of investment and acquisition opportunities;
- Benefit both short-term and long-term interests of Provident, its policyholders, employees, the communities in which Provident does business, and other groups that will be affected by the transaction; and
- Allow Provident to become affiliated with a larger enterprise with significant financial strength.

Moreover, Provident states that the Conversion and Merger will not, in any way, change premiums or reduce benefits, values, guarantees, or other policy obligations of Provident to its policyholders. Also, Provident represents that it will continue to pay policyholder dividends as declared.

7. Accordingly, Provident requests an administrative exemption from the Department which, if granted, will permit

(1) the initial issuance, by Provident, of Provident Shares to the Conversion Agent, as stockholder of record, on behalf of any Eligible Member, including any Eligible Member which is a Plan, including a Provident Plan[3]; (2) the exchange, by the Conversion Agent, of Provident Shares for Sponsor Class A Shares issued by the Sponsor, or, the receipt of Cash or Policy Credits, in exchange for such policyholder's membership interest in Provident or in connection with the Merger between Provident and the Merger Sub, a wholly-owned subsidiary of the Sponsor, in accordance with the terms of the Plan of Conversion and the Merger Agreement, adopted by Provident and implemented pursuant to the Conversion Act and the applicable provisions of the Pennsylvania Business Corporation Law of 1998.

Provident represents that the receipt of the demutualization consideration pursuant to the Plan of Conversion by an Eligible Member which is a Plan may be viewed as a prohibited sale or exchange of property between the Plan and Provident in violation of section 406(a)(1)(A) of the Act. Moreover, Provident states that the transaction may also be construed as a transfer of plan assets to, or a use of plan assets by or for the benefit of, a party in interest

[2] Provident states that because Pennsylvania law does not provide for demutualizations structured as reverse triangular mergers or permit the direct merger of a stock company into a mutual company, it would not be possible for the insurer to become a wholly-owned subsidiary of the Sponsor through the merger of the Merger Sub with and into Provident without the prior conversion of Provident from a mutual company to a stock company under Pennsylvania law. As a result, Provident explains that it is necessary for Provident to convert from a mutual insurance company to a stock corporation under Pennsylvania law before the Merger Sub can merge with and into Provident. In addition, Provident states that because it holds non-transferable licenses and policy form approvals necessary for the operation of its business, and for other substantial business reasons, Provident must be the surviving entity in any merger.

[3] Provident represents that it is aware that the Sponsor Class A Shares would constitute ''qualifying employer securities'' within the meaning of section 407(d)(5) of the Act, and that section 408(e) of the Act would apply to such distributions. Nevertheless, Provident has specifically requested that the exemption apply to the receipt of Sponsor Class A Shares by any of the Provident Plans, if applicable, regardless of the ability by such Plan to utilize section 408(e) of the Act. (The Department, however, expresses no opinion herein on whether the Sponsor Class A Shares would constitute a ''qualifying employer security'' within the meaning of section 407(d)(5) of the Act and whether section 408(e) of the Act would apply to such distributions.) Provident believes that this expanded type of exemptive relief will provide the greatest flexibility for Wilmington Trust, the independent fiduciary for the Provident Plans, to select suitable types of consideration.

in violation of section 406(a)(1)(D) of the Act.

In addition to the above, Provident is requesting that the exemption apply, for a period of up to 6 months following the Effective Date, to the holding, by the Home Office Pension Plan, of Sponsor Class A Shares whose fair market value exceeds 10 percent of the Provident Plan's assets, in violation of sections 406(a)(1)(E) and (a)(2) and 407(a)(2) of the Act.[4]

The proposed exemption includes a number of conditions that protect Eligible Members that are Plans, which are consistent with the conditions proposed under prior demutualization exemptions granted by the Department. Generally, the conditions rely on the safeguards provided under Pennsylvania insurance law to protect the interests of all policyholders, including those that are Plans, in connection with the Conversion and Merger. Among the safeguards is the requirement that distributions to Eligible Members that are Plans pursuant to the exemption must be on terms no less favorable to the Plans than Eligible Members that are not Plans. In this regard, Eligible Members that are Plans must participate in the Conversion on the same basis as Eligible Members that are not Plans.

In addition, to represent the interests of the Provident Plans with respect to such activities as voting and the election of demutualization consideration, Provident has retained Wilmington Trust Company (Wilmington Trust), to act as the Independent Fiduciary.

Pennsylvania Law Procedural Requirements for Conversions

8. The Conversion Act establishes an approval process for the demutualization of a life insurance company organized under Pennsylvania law. In this regard, a plan of demutualization must be approved by the board of directors of the converting company, by the Commissioner, and by a vote of the Eligible Members of the converting company.

First, the Plan of Conversion, including the Merger, must be approved by an affirmative vote of not less than two-thirds of the converting company's board of directors. Then, the Plan of Conversion, including the Merger, must be approved by the Commissioner who will approve it if, after holding a public hearing, he or she determines that the Plan of Conversion complies with all provisions of Pennsylvania law and is fair and equitable to the company and the policyholders. The policyholders of the mutual life insurance company generally must also approve the Plan of Conversion and the Merger. The Conversion Act provides that the policyholders eligible to vote on the Plan of Conversion are ''Eligible Members'' of the mutual life insurance company. Before the Conversion and the Merger can become effective, the Plan of Conversion must be put to a vote of the eligible members of the converting company. Under the Conversion Act, the eligible members must be provided with notice of the meeting of policyholders called for the purpose of voting whether to approve the demutualization plan, and the Plan of Conversion must be approved by a vote of not less than two-thirds of the votes of the insurer's eligible members voting thereon in person, by proxy or by mail.

9. Consistent with the requirements of Pennsylvania law, the Plan of Conversion adopted by Provident provides for Provident to file an application with the Commissioner under Section 803–A of the Conversion Act to reorganize as a stock life insurance company. The Commissioner will hold a hearing on whether the terms of the demutualization comply with the Conversion Act after giving written notice to Provident and other interested persons. The Plan of Conversion also provides for Provident Eligible Members to be able to comment on the Plan of Conversion at the hearing, for the Eligible Members to vote on the Plan of Conversion at the Eligible Members' Meeting and for Provident to provide notice to its Eligible Members of both the public hearing and the Eligible Members' Meeting.

The Conversion Act explicitly permits the Commissioner to employ staff personnel and to engage outside consultants to assist him in determining whether a demutualization plan meets the requirements of the Conversion Act and any other relevant provisions of the Pennsylvania law. In the case of the proposed demutualization, the Commissioner has retained an actuarial firm, Tillinghast Towers Perrins, and is expected to hire an accounting firm, legal advisers and an investment banking firm as consultants.

A decision by the Commissioner to approve a demutualization plan pursuant to the Conversion Act is then subject to judicial review in Pennsylvania courts.

In addition to the Pennsylvania regulatory requirements, Provident has agreed to file a copy of the Plan of Conversion with the Superintendent.[5] The Plan of Conversion may also be subject to review by the Superintendent, who may raise objections if the Plan of Conversion is deemed to be unfair or inequitable to New York policyholders. If the Superintendent opines unfavorably on the Plan of Conversion, Provident, as a practical matter, would either amend the Plan of Conversion or work out a satisfactory solution with the Superintendent. If the Superintendent were to require changes unacceptable to the Commissioner, Provident would have to work with both regulators to arrive at a satisfactory solution.

Provident's Plan of Conversion was adopted by its Board of Directors on December 14, 2001. Provident expects the Eligible Members' Meeting will occur in the latter part of the third quarter for the 2002 calendar year, with

[4] Section 406 (a)(1)(E) of the Act prohibits the acquisition by a plan of any employer security which would be in violation of section 407(a) of the Act. Section 406(a)(2) of the Act states that no fiduciary who has authority or disrection to control the assets of a plan shall permit the plan to hold any employer security if he [or she] knows that holding such security would violate section 407(a) of the Act. Section 407(a)(1) of the Act prohibits the acquisition by a plan of any employer security which is not a qualifying employer security. Section 407(a)(2) of the Act provides that a plan may not acquire any qualifying employer security, if immediately after such acquisition, the aggregate fair market value of such securities exceeds 10 percent of the fair market value of the plan's assets.

In addition to the above, section 407(f) of the Act, which is applicable to the holding of a qualifying employer security by a plan other than an eligible individual account plan, requires that (a) immediately following its acquisition by a plan, no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan; and (b) at least 50 percent of the stock be held by persons who are independent of the issuer. Provident has confirmed that to the best of its knowledge, none of the Sponsor Class A Shares which will be issued to the Provident Plans will violate the provisions of section 407(f) of the Act.

[5] Specifically, section 1106(i) of the New York Insurance Law [Section 1106(i)] authorizes the Superintendent to review the demutualization plan of a foreign life insurer licensed in New York and to specify the conditions, if any, that the Superintendent would impose in order for the foreign insurer to retain its New York license following its demutualization. In this regard, Section 1106(i) requires that a foreign life insurer licensed in New York file with the Superintendent a copy of the demutualization plan at least 90 days prior to the earlier of (a) the date of any public hearing required to be held on the plan of reorganization by the insurer's state of domicile and (b) the proposed effective date of the demutualization.

If, after examining the plan of demutualization, the Superintendent finds that the plan is not fair or equitable to the New York policyholders of the insurer, the Superintendent must set forth the reasons for his findings. In addition, the Superintendent must notify the insurer and its domestic state insurance regulator of his findings and his reasons for such findings and advise of any requirements he considers necessary for the protection of current New York policyholders in order to permit the insurer to continue to conduct business in New York as a stock life insurer after the demutualization.

notice of such meeting having been mailed at least 30 days prior to the scheduled meeting date to approximately 1,050 Plan policyholders which are Eligible Members. Approximately 316,317 Eligible Members will be eligible to vote on the Plan of Conversion and each Eligible Member will be entitled to only one vote, regardless of the number or size of the policies owned. Further, Provident's hearing on the Plan of Conversion is expected to be held on May 23, 2002 in King of Prussia, Pennsylvania. As for the actual Conversion and Merger, Provident expects these events will transpire during the latter part of the third quarter of 2002.[6] Provident expects these events should occur within three months of approval of the Plan of Conversion by the Commissioner. If the Conversion and Merger are not completed by December 31, 2002, the Merger Agreement may be terminated. If the Merger Agreement is terminated, the Conversion and Merger will not take place.

Distributions to Eligible Members

10. Provident's Plan of Conversion provides for Eligible Members to ultimately receive Sponsor Class A Shares, Cash, or Policy Credits as consideration for giving up their membership interests in the mutual company, which interests are extinguished as a result of the demutualization. For this purpose, an Eligible Member is essentially a policyholder whose name appears on the insurer's records as owner of an eligible policy on the date the Plan of Conversion is adopted. As stated above, any determination to receive Sponsor Class A Shares, Cash or Policy Credits by an Eligible Member which is a Plan, pursuant to the Plan of Conversion, will be made by one or more Plan fiduciaries which are independent of Provident and its affiliates. In this regard, neither Provident nor its affiliates will exercise any investment discretion or provides ''investment advice,'' within the meaning of 29 CFR 2510.3–21(e), with respect to such decisions.[7]

11. It is anticipated that the following steps will occur on or prior to the Effective Date:

(a) The Sponsor will make a capital contribution in Cash to the Merger Sub in an amount equal to the excess of (*x*) the total amount of Cash and Policy Credits that are to be paid or credited to Eligible Members in the transactions, over (*y*) the total amount of Cash and Policy Credits to be paid or funded by Provident from its surplus as it existed prior to the Conversion and Merger. The amount to be paid or funded by Provident from its surplus as it existed prior to the Merger will, when added to the amount paid or payable by Provident in respect of costs and expenses incurred in connection with the Conversion and the Merger, be equal to not more than 10 percent of the value of Provident as of the Effective Date without taking into account any diminution resulting from such costs and expenses.

(b) Provident will convert to a stock company. Immediately following the Conversion and under the terms of the Plan of Conversion, the Conversion Agent will vote the Provident Shares in favor of the Merger.

(c) The Merger Sub then will merge with and into Provident, with Provident as the surviving corporation. The Provident Shares evidenced by the global certificate will be extinguished. In exchange therefor, Eligible Members will be entitled to receive Sponsor Class A Shares, Cash, or Policy Credits.

12. In order to determine the amount of consideration to which each Eligible Member is entitled (combinations of different forms of consideration will not be permitted), each Eligible Member will be allocated a number of Provident Shares equal to the sum of (a) a fixed minimum number of shares[8] and (b) an additional number of shares based on actuarial formulas that take into account each policy's contributions to the surplus and asset valuation reserve of Provident, which formulas have been approved by the Commissioner. As noted above, upon consummation of the Merger, the Provident Shares that are allocated to those policyholders who are entitled to receive stock will be exchanged for Sponsor Class A Shares, Cash or Policy Credits in accordance with the terms of the Merger Agreement.

Consideration Payable to Eligible Members

13. Under the Plan of Conversion, certain Eligible Members will receive Cash or Policy Credits in respect of the extinguishment of their membership interests in the Conversion. The remaining Eligible Members will be issued Provident Shares in respect of their membership interests in Provident. With respect to the Merger, the Provident Shares will be extinguished and, in exchange therefore, Eligible Members will be entitled to receive Sponsor Class A Shares, Cash, or Policy Credits.

Eligible Members who own the following types of policies will be required under the Plan of Conversion to receive Policy Credits in exchange for their membership interests in Provident: a policy that is an individual retirement annuity contract (the IRA) within the meaning of section 408(b) or 408A of the Code or a tax sheltered annuity contract (the TSA) within the meaning of section 403(b) of the Code; or a policy that is an individual annuity contract that has been issued pursuant to a Plan qualified

[6] However, the Department notes that the Merger and Plan of Conversion must take place five business days after the Eligible Members' Meeting. At such meeting, Eligible Members have the opportunity to vote for or against the Conversion and Merger. Notice of the Eligible Members' Meeting cannot be sent to Eligible Members until issuance of an order from the Commissioner approving the Plan of Conversion. The Department also notes that if the subject exemption is not received prior to the Effective Date of the Plan of Conversion, Provident will, subject to the Commissioner's approval, either pay consideration to such Eligible Members or delay payment of such consideration and place said amount in an escrow or similar arrangement subject to terms and conditions approved by the Commissioner.

[7] ''The proceeds of the demutualization will belong to the Plan if they would be deemed to be owned by the Plan under ordinary notions of property rights. See ERISA Advisory Opinion 92–02A, January 17, 1992 (assets of plan generally are to be identified on the basis of ordinary notions of property rights under non-ERISA law). It is the view of the Department that, in the case of an employee welfare benefit plan with respect to which participants pay a portion of the premiums, the appropriate plan fiduciary must treat as plan assets the portion of the demutualization proceeds attributable to participant contributions. In determining what portion of the proceeds are attributable to participant contributions, the plan fiduciary should give appropriate consideration to those facts and circumstances that the fiduciary knows or should know are relevant to the determination, including the documents and instruments governing the plan and the proportion of total participant contributions to the total premiums paid over an appropriate time period. In the case of an employee pension benefit plan, or where any type of plan or trust is the policyholder, or where the policy is paid for out of trust assets, it is the view of the Department that all of the proceeds received by the policyholder in connection with a demutualization would constitute plan assets.'' *See* ERISA Advisory Opinion 2001–02A, February 15, 2001.

[8] The fixed component of consideration will equal the quotient of: (A) 20% of the total number of Allocable Provident Shares divided by (B) the total number of Eligible Members, provided that any resulting fractional number of Provident Shares shall be rounded to the nearest whole number of Provident Shares. Determination of Allocable Provident Shares depends upon the ''Sponsor Final Stock Price'' which, as defined in the Merger Agreement, means ''the volume weighted average of the sales prices of the Sponsor Class A Shares as published by Bloomberg Professional Service for the 15 consecutive Trading Dates ending on the fifth Trading Day immediately preceding the Closing Date.'' The aggregate purchase price is also subject to a ''collar'' adjustment based on fluctuations in the stock price of the Sponsor Class A Shares and an adjustment related to the amount of assets to be allocated to a ''closed block'' of assets for the benefit of certain dividend receiving policies. Thus, the total number of shares allocated to the fixed component will not fully be determined until the Closing Date of the Merger and such total may be subject to further regulatory approval.

under sections 401(a) or 403(a) of the Code directly to the Plan participant; or a policy that is an individual life insurance policy that has been issued pursuant to a Plan qualified under section 401(a) or 403(a) of the Code directly to the plan participant. These policyholders are collectively referred to as ''Policy Credit Recipients.''

Also, with respect to the Conversion, certain Eligible Members will be required to receive consideration in the form of Cash in exchange for their membership interests in Provident. Said policyholders are collectively referred to as ''Cash Recipients.'' A Cash Recipient is a policyholder whose address for mailing purposes as shown on Provident's records is located outside the United States; or whose address for mailing purposes as shown on Provident's records on the Effective Date is an address at which mail is undeliverable or deemed to be undeliverable in accordance with guidelines approved by the Commissioner; or to whom Provident determines in good faith to the satisfaction of the Commissioner that it is not reasonably feasible or appropriate to provide consideration in the form that such Eligible Member would otherwise receive.[9]

Eligible Members that own group annuity contracts designed to fund benefits under a retirement plan which is qualified under section 401(a) or section 403(a) of the Code (including a plan covering employees described in section 401(c)) that do not affirmatively elect to receive Sponsor Class A Shares or Cash in the Merger will receive Policy Credits (Qualified Plan Recipients). All other Eligible Members will have the option to receive Cash rather than Sponsor Class A Shares in the Merger.[10] It is possible that not all Eligible Members opting to receive Cash or Policy Credits will receive Cash or Policy Credits. Instead, the aggregate amount of Cash and Policy Credits available will be limited. If elections for Cash and Policy Credits are over-subscribed, available Cash and Policy Credits first will be paid or credited to Mandatory Consideration Recipients and then will be paid or credited sequentially to Optional Consideration Recipients, starting with electing Eligible Members entitled to receive the smallest amount of consideration and continuing to electing Eligible Members receiving the largest amount of consideration at which all Optional Consideration Recipients at that level of consideration can be paid with the available funds. No Eligible Member will receive a combination of Cash or optional Policy Credits and Sponsor Class A Shares.

Each Provident Share issued in the Conversion to an Eligible Member (other than an Optional Consideration Recipient) will be exchanged for one Sponsor Class A Share on a one for one exchange in the Merger. The amount of Cash or value of Policy Credits received by each Mandatory Consideration Recipient or Optional Consideration Recipient in the Conversion or Merger will be based on (*x*) the number of Sponsor Class A Shares such Eligible Member would have received if such Eligible Member had received Sponsor Class A Shares in the Merger and (*y*) the average market value of such Sponsor Class A Shares for the 15 consecutive trading days ending on the fifth trading day immediately preceding the Effective Date.

Limitation on Consideration and Effect on Existing Policies

14. The amount of Cash and Policy Credits that may be paid or credited pursuant to the Plan of Conversion and the Merger Agreement, in the aggregate, will not exceed (*x*) the total amount paid or credited that will be funded out of Provident's surplus as this surplus existed prior to the Merger, with certain limitations not relevant for purposes of this request, and (*y*) additional amounts paid or credited with funds supplied by the Sponsor as a capital contribution to the Merger Sub. These additional amounts cannot exceed 20 percent of the value of Provident as of the Effective Date, determined without taking into account any diminution resulting from costs or expenses paid or payable by Provident in connection with the Conversion and Merger, but including amounts paid or credited out of Provident's surplus pursuant to clause (*x*) above.

Under the current terms of the Merger Agreement, the amount of Cash or Policy Credits that may be paid or funded with Cash supplied by the Sponsor is further limited so that no more than 20 percent of the total number of Eligible Members receiving consideration provided or funded by the Sponsor (including Eligible Members receiving Sponsor Class A Shares) will receive Cash or Policy Credits. The parties to the Merger have agreed to waive this limitation if the Internal Revenue Service issues certain tax rulings.

The Closed Block (the Closed Block)

15. Pursuant to the Plan of Conversion, Provident will, for policyholder dividend purposes only, operate the Closed Block for the benefit of individual policies paying ''experience-based policy dividends''. For accounting purposes only, assets of Provident will be allocated to the Closed Block in an amount that produces cash flows which, together with anticipated revenue from the Closed Block policies and contracts, are expected to be sufficient to support the Closed Block policies, including, but not limited to, provisions for payment of claims and certain charges and taxes, and to provide for continuation of dividend scales payable for 2001, if the experience underlying such scales (including the portfolio interest rate) continues, and to allow for appropriate adjustments in such scales if such experience changes. Assets in the Closed Block remain as general account assets of Provident and are fully subject to the claims of creditors of Provident, like any general account assets.

Commission-Free Program

16. Under the terms of the Plan of Conversion, the Sponsor will establish the Commission-Free Program within 90 days after the Effective Date which will continue for at least 90 days thereafter. The Commission-Free Program will provide any shareholder holding fewer than 100 Sponsor Class A Shares the opportunity to either sell all of such shareholder's shares or to buy additional shares necessary to increase such shareholder's shares to 100, in either case, at the prevailing market prices but without paying brokerage commissions, mailing charges, registration fees, or other administrative or similar expenses.

Independent Fiduciary

17. As stated above, Wilmington Trust will serve as the Independent Fiduciary for all of the Provident Plans in connection with the implementation of Provident's Plan of Conversion. Generally, such transactions over which Wilmington Trust will exercise investment discretion may result in the acquisition, holding or disposition of Sponsor Class A Shares by the Provident Plans. Wilmington Trust states that it is familiar with the Department's independent fiduciary requirements and has acknowledged and accepted such duties, responsibilities and liabilities to act on behalf of the Provident Plans. In return for services rendered, Wilmington Trust

[9] The Policy Credit Recipients and the Cash Recipients are hereinafter collectively referred to as ''Mandatory Consideration Recipients.''

[10] Optional Cash Recipients and Qualified Plan Recipients are together referred to herein as ''Optional Consideration Recipients.''

will be compensated by either Provident, a successor, or an affiliate.

Wilmington Trust was founded in 1903 and its home state is Delaware. As of December 31, 2001, Wilmington Trust had approximately $7.3 billion in banking assets and $24.6 billion in assets under management. Wilmington Trust maintains its primary focus on asset management and trust services and is also a specialty provider of corporate financial services on an international scale. Since 1942, Wilmington Trust has provided trustee, custodial, and administrative services for all types of qualified and non-qualified employee benefit plans, and currently has approximately 1,000 employee benefit plans under management.

Wilmington Trust represents that it is independent of Provident and its affiliates. In this regard, Wilmington Trust asserts that it has no business, ownership or control relationship, nor is it otherwise affiliated with Provident and its affiliates. Further, Wilmington Trust represents that while it either directly or through its affiliates may provide one or more banking, trust or other customary services to Provident or its affiliates from time to time, it derives less than one percent of its annual income from Provident and its affiliates.

As the Independent Fiduciary for the Provident Plans, Wilmington Trust will be required to (a) vote on whether to approve or not to approve the proposed demutualization; (b) elect between consideration in the form of Sponsor Class A Shares, Cash or Policy Credits on behalf of such Plans; (c) review and approve Provident's allocation of Sponsor Class A Shares, Cash or Policy Credits received for the benefit of the participants and beneficiaries of the Provident Plans; (d) vote on Sponsor Class A Shares that are held by the Provident Plans and dispose of such stock held by the Home Office Pension Plan, which exceeds the limitation of section 407(a)(2) of the Act, as soon as it is reasonably practicable, but in no event later than six months after the Effective Date of the Plan of Conversion; and (e) take all actions that are necessary and appropriate to safeguard the interests of the Provident Plans and their participants and beneficiaries. In addition, Wilmington Trust will provide the Department with a complete and detailed final report as it relates to the Provident Plans prior to the Effective Date of the demutualization. Finally, Wilmington Trust states that it has conducted a preliminary review of Provident's Plan of Conversion and it sees nothing in the Plan that would preclude the Department from proposing the requested exemption.

18. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan of Conversion will be implemented in accordance with procedural and substantive safeguards that are imposed under Pennsylvania law and will be subject to review and supervision of the Commissioner and the Superintendent.

(b) The Commissioner will review the terms and options that are provided to Eligible Members of Provident as part of such Commissioner's review of the Plan of Conversion and Merger and the Commissioner will approve the Plan of Conversion and Merger following a determination that such Plan is fair and equitable to Eligible Members (including Eligible Members that are Plans).

(c) The Superintendent will object to the Plan of Conversion if he or she finds that such Plan is not fair or equitable to New York policyholders.

(d) As part of their separate determinations, both the Commissioner and the Superintendent must concur on the terms of the Plan of Conversion.

(e) In the case of an Eligible Member that is a Plan, one or more independent Plan fiduciaries will have an opportunity to vote to approve the terms of the Plan of Conversion (or to comment on such Plan), and will be solely responsible for all such decisions after receiving full and complete disclosure from Provident.

(f) The Plan of Conversion and Merger will help assure the continuity of Provident's life insurance and other business, will enhance the competitiveness of Provident and will generate significant opportunities for improved financial performance.

(g) The proposed exemption will allow Eligible Members that are Plans to receive Sponsor Class A Shares, Cash or Policy Credits, in exchange for their membership interests in Provident and neither Provident nor any of its affiliates will exercise investment discretion or provide ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions or options given.

(h) Each Eligible Member will have an opportunity to determine whether to vote to approve the terms of the Plan of Conversion and Merger and will also be solely responsible for any decisions that may be permitted under the Plan of Conversion regarding the form of consideration to be received in the demutualization.

(i) All Plans that are Eligible Members will participate in the transactions and on the same basis as Eligible Members that are not Plans.

(j) No Eligible Member will pay any brokerage commissions or fees in connection with the receipt of Sponsor Class A Shares or Policy Credits or in connection with the implementation of the Commission-Free Program.

(k) The demutualization will not, in any way, change premiums or reduce policy benefits, values, guarantees or other policy obligations of Provident to its policyholders.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M. N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

Chiquita Processed Foods 401(k) Retirement Savings Plan (the 401(k) Plan) and the Chiquita Savings and Investment Plan (the Savings Plan; collectively the Plans)

Located in New Richmond, WI and Cincinnati, OH, respectively

[Application Nos. D–11063 and D–11064]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[11] If the exemption is granted, the restrictions of sections 406(a), 406(b) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective March 19, 2002, to (1) the acquisition and holding by the Plans of certain new warrants (the Warrants) to purchase new common stock (the New Common Stock) issued by Chiquita Brands International, Inc. (the Employer), a party in interest with respect to the Plans; and (2) the subsequent exercise of the Warrants, as directed by participants in the Plans, provided that the following conditions were met:

(a) The Plans had little, if any, ability to affect the negotiation or confirmation of either the Plan of Reorganization of Chiquita (the Original POR) filed by the Employer on November 28, 2001 under Chapter 11 of Title 11 of the United States Code (the Bankruptcy Code), the First Amended Plan of Reorganization of Chiquita (the First Amended POR),

[11] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

subsequently filed under the Bankruptcy Code by the Employer on January 18, 2002, or the Second Amended Plan of Reorganization of Chiquita (the Second Amended POR), subsequently filed under the Bankruptcy Code by the Employer on March 7, 2002.

(b) The acquisition and holding of the Warrants did not occur until the Second Amended POR had been confirmed.

(c) The Plans acquired the Warrants automatically in connection with the Employer's bankruptcy proceedings and without any unilateral action on their part.

(d) All shareholders, including the Plans, were treated in a like manner with respect to the issuance of the Warrants.

(e) The Warrants represented less than 25 percent of the assets of either Plan.

(f) Any decision to exercise the Warrants acquired by the Plans in connection with the Employer's bankruptcy will be made by the participants in accordance with the terms of a warrant agreement (the Warrant Agreement), as well as in accordance with the Plan provisions for individually-directed investment of participant accounts.

(g) The Plans did not pay any fees or commissions in connection with the receipt of the Warrants, nor will the Plans pay any fees or commissions in connection with the holding or exercise of the Warrants.

(h) The trustees of the Plans (the Trustees) will not allow participants to exercise the Warrants held by their individual accounts in the Plans unless the fair market value of the New Common Stock exceeds the exercise price of the Warrants.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of March 19, 2002.

Summary of Facts and Representations

1. The Employer is a New Jersey corporation maintaining its principal place of business in Cincinnati, Ohio. The Employer is an international marketer, producer and distributor of fresh fruits, vegetables and processed foods sold under the ''Chiquita'' and other brand names.

2. The Plans, which are sponsored by the Employer, are defined contribution plans that provide for participant-directed investments. Participants in the Plans may direct the investments of their accounts into a variety of funds, including the Employer's common stock fund. The Savings Plan, formerly known as the ''United Brands Company Savings and Investment Plan,'' was adopted by the Employer effective January 1, 1986. As of December 21, 2001, the Savings Plan had total assets of approximately $34,521,487 and 989 participants. Of the total assets, the Savings Plan held 1,285,537 shares of Employer common stock (the Old Employer Common Stock) which represented approximately 2.27% of the fair market value of the assets of the Savings Plan and was allocated to the individual accounts of 557 participants. Putnam Fiduciary Trust Company, a trust company having its principal place of business in Boston, Massachusetts, serves as the trustee for the Savings Plan.

The 401(k) Plan was formed, effective April 1, 1999, as the result of a merger of the American Fine Foods 401(k) Plan and the Stokely USA, Inc. Retirement Savings Plan into the Friday Canning Corporation 401(k) Savings Plan. As of December 21, 2001, the 401(k) Plan had total assets of approximately $37,521,487 and 2,624 total participants. Of the total assets, the 401(k) Plan held 199,515 shares of the Old Employer Common Stock which represented about 0.32% of the fair market value of the assets of such plan and was allocated to the accounts of 283 participants. UMB Bank, N.A., a trust company having its principal place of business in Kansas City, Missouri, serves as the trustee for the 401(k) Plan.

3. The Plans are administered by the Chiquita Brands International, Inc. Employee Benefits Committee (the Benefits Committee) appointed by the Board of Directors of the Employer. Since the participants in the Plans direct the investment of their accounts, neither the Benefits Committee, nor the Trustees, exercise investment discretion over the assets involved in the transactions that are described herein.[12]

4. The Savings Plan previously allowed participants to defer up to 12% of compensation and provides for matching and discretionary Employer contributions. The Savings Plan was amended to comply with recent tax law changes in February 2002. As part of the amendment process, the Savings Plan was amended to allow participants to defer up to 15% of compensation.

The 401(k) Plan also was amended to comply with recent tax law changes. The 401(k) Plan allows participants to defer up to 15% of compensation and also provides for matching and discretionary employer contributions.

5. On November 28, 2001, the Employer filed, with the Bankruptcy Court, the Original POR under the Bankruptcy Code, along with its petition. Under the Original POR, holders of shares of Old Employer Common Stock were entitled to receive shares of New Common Stock and Warrants to purchase additional shares of New Common Stock. The Old Employer Common Stock was to be cancelled on the Effective Date of the reorganization. The Effective Date would be a business day selected by the Employer after the Original POR was confirmed by the Bankruptcy Court and certain material conditions to the effectiveness of the Original POR had been satisfied. Namely, the approval of such POR in the Bankruptcy Court and the execution of an amended finance facility by Chiquita Brands, Inc., a wholly owned subsidiary of the Employer, which employs some Plan participants and also owns Chiquita Processed Foods. As holders of the Old Employer Common Stock, the Plans were entitled to receive shares of New Common Stock and the Warrants on the Effective Date, or as soon as reasonably practicable thereafter, under the Original POR.

6. On January 18, 2002, the Employer filed the First Amended POR with the Bankruptcy Court primarily to reflect actual distributions to the Employer's common and preferred shareholders. After the filing of the Chapter 11 case, up until January 2002, the Employer's preferred shareholders had been able to convert their owned shares of Employer preferred stock (the Employer Preferred Stock) to shares of Old Employer Common Stock. As a result, the Employer could not determine exact distributions to each class, because the numbers of outstanding shares of the Employer Preferred Stock were changing daily. However, the Bankruptcy Court entered an order prohibiting the conversion at the option of the holder of the Employer Preferred Stock into shares of Old Employer Common Stock after January 8, 2002. As a result of this prohibition, the Employer was able to set the distributions and filed the First Amended POR with the Bankruptcy Court to show accurate stock distributions.

7. On March 7, 2002, the Employer filed the Second Amended POR with the Bankruptcy Court. The Second Amended POR was confirmed by the Bankruptcy Court on March 8, 2002,

[12] The Department notes that ERISA's general standards of fiduciary conduct applied to the decision to offer Old Employer Common Stock as an investment option under the Plans. In this regard, section 404(a)(1) of the Act requires that a fiduciary discharge his or her duties in regards to the plan solely in the interest of the participants and beneficiaries, and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

and became effective on March 19, 2002.

The major change in the Second Amended POR was the modification of certain releases in the Original POR and the First Amended POR. In this regard, in the Original POR and First Amended POR, holders of equity and claims who were entitled to receive distributions under the POR were deemed to release certain claims against certain parties relating to transactions in securities, the Employer, the POR and the Chapter 11 case. In the Second Amended POR, the releases by holders of equity were limited to claims in respect of the distributions that would be received as a result of such POR.

In addition, under each POR, all holders of Old Employer Common Stock would be entitled to receive their *pro rata* share of the New Common Stock and the Warrants. Moreover, the Old Employer Common Stock would be cancelled and extinguished.

8. On March 19, 2002, the Effective Date of the Second Amended POR, approximately 40 million shares of New Common Stock, including 800,000 shares of New Common Stock that were subject to delayed delivery were issued or issuable pursuant to the Second Amended POR. Of these, approximately one million shares of New Common Stock, as well as 13,333,333 Warrants, were distributed to the Plans and the other shareholders of the Old Employer Common Stock and Employer Preferred Stock and preference stock. Based on the number of shares of Old Employer Common Stock held by the Plans as of March 19, 2002, the Plans received 10,086 shares of New Common Stock (the Plans did not contain Employer Preferred Stock or preference stock). Of the New Common Stock issued to the Plans, 1,416 shares were allocated to the 401(k) Plan and 8,670 shares were allocated to the Savings Plan.

In addition to shares of New Common Stock, approximately 168,114 Warrants were issued to the Plans. The Warrants represented less than 25 percent of each Plan's assets. Of the Warrants distributed, 23,604 Warrant shares were transferred to the 401(k) Plan and 144,510 Warrant shares were transferred to the Savings Plan and allocated, on March 20, 2002, to the individual accounts of the affected participants. Any fractional shares of New Common Stock and Warrants were converted through market sales into cash, which in turn, was subsequently allocated to the participants' accounts.[13]

The Second Amended POR also authorized the adoption of a new stock option plan, and the issuance thereunder of options for the purchase of up to 5,925,926 shares of New Common Stock. If all such options and all Warrants are exercised, the Employer will have issued and outstanding 59,259,259 shares of New Common Stock.

Because of the relatively small amount of Old Employer Common Stock in the Plans, it is represented that the participants, although entitled to vote, had little, if any ability to negotiate the terms of the Original POR, the First Amended POR or the Second Amended POR.

9. The Warrants are exercisable for 13,333,333 shares of New Common Stock. Thus, each Warrant entitles the holder to purchase one share of New Common Stock during the period commencing on March 19, 2002 and ending on the seventh anniversary of the Effective Date of the Second Amended POR. The Warrants are presently listed on the New York Stock Exchange (the NYSE). Participants in the Plans are not entitled to invest in additional Warrants.

The exercise price for the Warrants has been set at a price per share that is equal to the ''Solvency Value.'' The Solvency Value is the value per share of the New Common Stock that, when multiplied by the number of shares of New Common Stock distributed to holders of old subordinated debenture claims against the Employer (and after adding such amount to the $250 million face amount of new senior notes to be issued to holders of old senior note claims and old subordinated debenture claims), will equal the amount of old senior note claims and old subordinated debenture claims for principal, plus unpaid interest on such principal through March 19, 2002, the Effective Date of the Second Amended POR. As stated in the Warrant Agreement, the exercise price of each Warrant is $19.23 per Warrant share.

10. All shareholders of Old Employer Common Stock, including the Plans, were treated in a similar manner with respect to the their acquisition and holding of the Warrants. No participant in the Plans paid, nor will pay, any fees or commissions in connection with the acquisition, holding, or exercise of the Warrants.

With respect to the exercise of the Warrants, the Trustees will follow the direction of the participants in accordance with the procedures set forth in the Warrant Agreement and established by the Benefits Committee. In this regard, the Trustees will not allow participants to exercise the Warrants held in such participants' individual accounts in the Plans unless the fair market value of the New Common Stock exceeds the exercise price of the Warrants. In addition, the shares of New Common Stock received upon the exercise of the Warrants (or cash in lieu of fractional shares) will be credited to participants' accounts. Moreover, the Benefits Committee is considering implementing a procedure whereby participants will be required to exercise at least 100 Warrant shares at any one time. If a participant does not own at least 100 Warrants, such participant will be required to exercise all of the Warrants held in his or her account at that time.

With respect to the sale of the Warrants, the Trustees will also follow the direction of the participants in accordance with procedures established by the Benefits Committee. All such sales will occur on the open market and in the 100 share increments described above. Following a sale transaction, the proceeds will be allocated to each affected participant's account in the Plans.[14]

11. The Employer represents that it analyzed the impact of each POR on the Plans. In particular, the Employer states that it analyzed the prohibited transaction implications of the automatic exchange of the Old Employer Common Stock held by the Plans for the Warrants. Accordingly, the Employer has requested exemptive relief from the Department with respect to the acquisition and holding by the Plans of the Warrants as well as with respect to the subsequent exercise of the Warrants by the participants in the Plans. If granted, the exemption would

[13] The cash equivalent of the fractional shares to which the participants of the Savings Plan were entitled, after applying certain conversion rates, was distributed to the Savings Plan on March 27, 2002. The cash was allocated to the participants' accounts, after settling with the transfer agent, on May 1, 2002. Similarly, the 401(k) Plan received the cash equivalent to which its participants were entitled, after applying certain conversion rates, on April 30, 2002, and the cash was allocated to the participants' accounts on the same date. The Employer had anticipated that the cash would be distributed to the Plans during the week of April 12, 2002 and allocated to participants as soon as administratively practicable thereafter. However, due to administrative complications, the cash distributions and allocations were not accomplished until the dates set forth above.

[14] Because the Warrants are listed on the NYSE, the Department has determined that no exemption is necessary with respect to sales of such securities, on the open market, to non-parties in interest, at the direction of participants. In this regard, if the Warrants are sold through an exchange in an ordinary ''blind transaction'' where neither the buyer nor the seller (nor the agent of either) knows the identity of the other party involved, no prohibited transaction will have occurred in violation of the Act (*see* ERISA Advisory Opinion 85–18A, April 23, 1985).

be effective as of March 19, 2002, which is the date the Warrants were issued to the Plans.

12. The Employer represents that the shares of New Common Stock that were acquired by the participant accounts in the Plans in conjunction with the issuance of the Warrants, would constitute a ''qualifying employer security'' within the meaning of section 407(d)(5) of the Act and that the acquisition and holding by the Plans of such stock would be statutorily exempt under section 408(e) of the Act.[15] However, the Employer notes that the Warrants are ''employer securities,'' as defined in section 407(d)(1) of the Act (as securities issued by an employer of employees covered under a plan or an affiliate of such employer), but are not ''qualifying employer securities.'' Therefore, the Employer asserts that in the absence of an administrative exemption, the acquisition and holding of the Warrants by the Plans or the subsequent exercise of the Warrants, as directed by the Plan participants, would violate sections 406(a), 406(b) and 407(a) of the Act.

13. In summary, it is represented that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The acquisition and holding of the Warrants by the Plans occurred in connection with the Employer's bankruptcy proceedings, pursuant to which all shareholders of the Old Employer Common Stock were treated in the same manner, thereby allowing certain affected Plan participants the ability to maximize the return on their shares of Old Employer Common Stock.

(b) The Plans had little, if any, ability to affect the negotiation and confirmation of either the Employer's Original POR, the First Amended POR or the Second Amended POR with respect to the bankruptcy proceedings.

(c) The Warrants were issued to the Plans automatically in connection with the Employer's bankruptcy proceedings and without any unilateral action on the part of the Plans.

(d) The Plan participants did not pay, nor will pay, any fees or commissions with respect to the acquisition, holding, or exercise of the Warrants.

(e) All shareholders, including the Plans, were treated in a like manner with respect to the issuance of the Warrants.

(f) The Warrants represented less than 25 percent of the assets of either Plan.

(g) Any decision to exercise the Warrants acquired by the Plans in connection with the Employer's bankruptcy will be made by the Plan participants, in accordance with the terms of the Warrant Agreement, as well as in accordance with the Plan provisions for individually-directed investment of participant accounts.

(h) The Trustees will not allow participants to exercise the Warrants held by their individual accounts in the Plans unless the fair market value of the New Common Stock exceeds the exercise price of the Warrants.

Notice to Interested Persons

The Employer will provide notice of the proposed exemption to all interested persons, including participants and beneficiaries who receive the Warrants, the Trustees, and the Benefits Committee, by first class mail within 10 days of the date of publication of the notice of proposed exemption in the **Federal Register**. The notice will include a copy of the proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments regarding the proposed exemption and requests for a public hearing are due within 40 days of the date of publication of the notice of pendency in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of June, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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BILLING CODE 4510–29–P

[15] Similarly, the Employer represents that the acquisition and holding by the participant accounts in the Plans of the Old Employer Common Stock would constitute a ''qualifying employer security.''

The term ''qualifying employer security'' means an employer security which is ''stock,'' a ''marketable obligation,'' or an ''interest in a publicly-traded partnership,'' under section 407(d)(5) of the Act.

In relevant part, section 408(e) of the Act provides that sections 406 and 407 of the Act shall not apply to the acquisition or sale by a plan of qualifying employer securities (as defined in section 407(d)(5)(1) if such acquisition is for adequate consideration (or in the case of a marketable obligation, at a price not less favorable to the plan than the price determined under section 407(e)(1)), (2) if no commission is charged with respect thereto, and (3) if—(A) the plan is an eligible individual account plan (as defined in section 407(d)(3), or (B) in the case of an acquisition by a plan which is not an eligible individual account plan, the acquisition is not prohibited under section 407(a) of the Act.

In this proposed exemption, the Department expresses no opinion herein on whether the exchange of the Old Employer Common Stock for the New Common Stock by the individual accounts of affected participants in the Plans satisfied the terms and conditions of section 408(e) of the Act.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–11036]

Notice of Proposed Individual Exemption to Amend and Replace Prohibited Transaction Exemption (PTE) 85–131, Involving the Watkins Master Trust (the Trust), Located in Atlanta, GA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed individual exemption to modify and replace PTE 85–131.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption which, if granted, would amend and replace PTE 85–131 (50 FR 32333, August 9, 1985). PTE 85–131 is an individual exemption providing relief, since March 29, 1985, for (1) the leasing of certain improved real property by the Trust to Watkins Associated Industries, Inc. (Watkins), a party in interest with respect to the plans (the Plans) participating in the Trust under the terms of a written lease (the New Lease); and (2) the possible cash purchase of the Trust's interest in the property by Watkins.

If granted, the proposed exemption would modify an option to purchase provision in the New Lease by allowing Watkins to acquire the Trust's leasehold interests in a building (the Building), the improvements (the Improvements) constructed thereon, and in a ground lease (the Ground Lease) on May 8, 2002, instead of at the end of New Lease renewal term on December 31, 2008. In addition, the proposed exemption would replace PTE 85–131, which expired by operation of law upon the consummation of the sale. If granted, the proposed exemption would affect participants and beneficiaries of, and fiduciaries with respect to the Trust.

DATES: Written comments and requests for a public hearing should be received by the Department on or before August 2, 2002.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of May 8, 2002.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington DC 20210, (Attention: Notice of Proposed Individual Exemption to Amend and Replace Prohibited Transaction Exemption 85–131, Involving the Watkins Master Trust; Application No. D–11036).

Interested persons are also invited to submit comments and/or hearing request to the Department by facsimile to (202) 219–0204 or by electronic mail to *moffittb@pwba.dol.gov.* by the end of the scheduled comment period. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8556. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that will amend and replace PTE 85–131. PTE 85–131 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code.

The proposed exemption has been requested in an application filed on behalf of the Trust and Watkins,[1] pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is being issued solely by the Department.

I. Background

As stated above, PTE 85–131 provides exemptive relief from the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, with respect to the leasing by the Trust to Watkins of certain real property and the potential cash purchase of the Trust's interest in the property by Watkins. PTE 85–131 is effective from March 29, 1985 until May 8, 2002, the date of the sale transaction described herein.

According to the Summary of Facts and Representations (50 FR 24067, June 7, 1985) underlying PTE 85–131, the Trust is a master trust which was originally established in 1984 to hold, manage and administer the assets of five defined contribution pension plans sponsored by Watkins, its affiliates and subsidiaries. Watkins, a Florida corporation engaged in diverse service and manufacturing enterprises, maintains its principal place of business in Atlanta, Georgia. At present, only three Plans participate in the Trust. They are the Watkins Associated Industries, Inc. Profit Sharing Plan, the LandSpan, Inc. Profit Sharing Plan, and the Southern Concrete Construction Company Profit Sharing Plan. Each of the participating Plans owns an undivided, *pro rata* interest in the assets of the Trust. As of December 31, 2000, the Trust held total assets of $39,752,458. The current trustee (the Trustee) of the Trust is SunTrust Bank, N.A. (SunTrust) of Atlanta, Georgia.

Formerly included among the assets of the Trust was a leasehold interest in a commercial office building containing approximately 20,860 net square feet of space, together with parking facilities. The Building is located at 1958 Monroe Drive, Atlanta, Georgia, and is situated on a 1.34 acre parcel of commercially-zoned real land (the Land). The Building is not located in close proximity to other real property that is owned by Watkins, Wilwat or their principals.

The Land is owned by William L. Monroe, Sr., an unrelated party, and was being leased to the Trust under the provisions of the Ground Lease. As lessee under the Ground Lease, the Trust had an estate for years under Georgia law.

The Ground Lease, which was a net lease requiring the Trust to incur such expenses as utilities, real estate taxes, assessments and maintenance, was originally acquired by the McDonough Construction Company and Affiliated Companies Profit Sharing Plan (the McDonough Plan) in 1958. At the time of the acquisition, the Land had been improved with the Building which was

[1] The Department is also considering an exemption request (D–11038) that has been filed on behalf of Wilwat Properties, Inc. (Wilwat), a party in interest with respect to the employee benefit plans participating in the Trust. In their request, Wilwat and the Trust are seeking exemptive relief which is similar to that contemplated herein.

being leased to McDonough Construction Company (McDonough), the sponsor of the McDonough Plan. McDonough was subsequently purchased by the Atlantic States Construction Company (Atlantic States), a corporation wholly owned by Watkins. On January 1, 1971, McDonough assigned its lessee interest in the Building to Watkins. On December 31, 1981, the McDonough Plan was merged into the Atlantic States Profit Sharing Plan (the Atlantic States Plan), which became one of the Plans formerly participating in the Trust.

As a result of these transactions, the Trust continued to lease the Building to Watkins in accordance with transitional rules set forth under section 414(c)(2) of the Act. Although the rental was increased on July 1, 1984 to $69,000 per annum to reflect the independently appraised fair market rental value of the Building, as determined by John W. Booth, M.A.I. of Atlanta, Georgia, the applicants acknowledged that Watkins's leasing arrangement with the Atlantic States Plan, and subsequently, the Trust, constituted a prohibited transaction after June 30, 1984 in violation of the Act. Accordingly, the applicants represented that they would pay excise taxes due under section 4975 of the Code within 60 days of the granting of the exemption.

The Ground Lease initially had a termination date of December 31, 1988. However, that term could be extended by the Trust for two, ten year terms through December 31, 2008, at which time the Trust would have the right to purchase its leasehold interest in the property, including the Improvements, for $16,000. Through December 31, 1993, annual rental under the Ground Lease was $3,600. Between January 1, 1994 through December 31, 2003, the annual rental under the Ground Lease was $4,000. Finally, between January 1, 2004 and December 31, 2008, the annual rental under the Ground Lease was set at $4,400.

PTE 85–131 permitted the Trust to lease the Building to Watkins under the terms of a revised lease (i.e., the New Lease), executed on March 29, 1985. The subject property then represented 19.5 percent of the Trust's assets. Like the Ground Lease, the New Lease had an original termination date of December 31, 1988. However, Watkins was given permission to extend the lease for two, ten year periods, subject to approval by Citizens and Southern National Bank (CSNB), of Atlanta, Georgia, the former Trustee, acting in the capacity as the independent fiduciary for the Trust. As lessee, Watkins was responsible for the payment of real estate taxes, insurance, utilities and other expenses associated with the property, including those attributable to the Ground Lease.

The initial annual rental under the New Lease was set at $79,700 per annum. This amount was payable in monthly installments of $6,641.67. On January 1, 1987 and every three years thereafter, the monthly rental was readjusted to reflect the then current fair market rental value as determined by a qualified, independent appraiser. In no event could the rental rate under the New Lease be less than $79,700 per annum. Upon termination of the New Lease, all Improvements constructed on the Building would belong to the Trust. Prior to the sale transaction that is described herein, Watkins paid the Trust a monthly rental of $11,613 or $139,345, annually.

The New Lease also gave Watkins the option to purchase (the Option) the Trust's ''leasehold estate and improvements'' at the end of the initial lease term and each renewal term. The Option specified that Watkins was required to pay the fair market value for such property, as determined by a qualified, independent appraiser who had been selected by the Trustee. The Option was also subject to approval of the Trustee and the purchase price was required to be paid in cash.

The transactions described in PTE 85–131 were monitored by CSNB, the Trustee of the Trust, which has also served as the independent fiduciary with respect to the New Lease. In such capacity, the Trustee reviewed the terms and conditions of the New Lease, including the Option and the condition and marketability of the property. The Trustee initially determined that the New Lease was protective of, appropriate for, and in the best interest of the Trust and the participants and beneficiaries of the Plans participating in the Trust. The Trustee also determined that the Trust was adequately diversified and had sufficient liquidity, and that the terms and conditions of the New Lease were favorable to the Trust. As the independent fiduciary, the Trustee stated that it would monitor Watkins's compliance with the terms and conditions of the New Lease, make a physical inspection of the Building, at least annually, determine whether any renewal or Option could be exercised, select independent appraisers, as required under the New Lease, and take any steps necessary to enforce and protect the rights of the Trust with respect to such property.

Effective January 1, 1989, CSNB was acquired by Trust Company Bank of Atlanta, Georgia (TCB). TCB then became the successor Trustee and the independent fiduciary for the Trust with respect to the New Lease. TCB subsequently merged with SunBank to form SunTrust, the current Trustee and the independent fiduciary. During the entire period of Trustee/independent fiduciary succession, the Trust was, at all times, monitored by an independent fiduciary.

II. Amendment and Replacement of PTE 85–131

Over the period of time that the Trust was a party to the Ground Lease and the New Lease, there were no defaults or delinquencies in rental payments made thereunder. The Trust did, however, expend $68,000 in rental payments under the Ground Lease, whereas the cost of the Improvements, ranging from the installation of a new air conditioning system in the Building to the renovation and construction of new offices, was borne by Watkins. The Trust also received rental income under the New Lease of $1,339,952. Since the Trust's cost basis in the Building was estimated at $797,000, its total investment return with respect to the property (net of acquisition and holding costs) was approximately $474,952 [$1,339,952–($797,000 + $68,000)].

On behalf of the Trust, the Trustee and Watkins seek to amend the New Lease thereby permitting the retroactive sale, by the Trust, of its leasehold interest in the Building, the Improvements and the Ground Lease to Watkins,[2] in accordance with the pricing terms specified in the Option. In this regard, the Trust would receive as consideration no less than the fair market value of such property as of the date of the sale.[3] The consideration

[2] It is represented that the Trust would seek a release from the owner of the Ground Lease from its obligations thereunder upon the completion of the proposed sale. However, regardless of whether the Trust obtains such a release from the owner, it is represented that Watkins would assume all liabilities under this lease and indemnify the Trust against any liability to the owner of the Ground Lease.

[3] The Trust would be conveying its entire leasehold interest in the Building, the Improvements and the Ground Lease. In this regard, a title search of the subject property during the first quarter of 2002 determined that on May 31, 1963 a predecessor to the Trust acquired a 15 percent interest in the property from an unrelated party who is presently deceased. Although the deed was never recorded, title records show that the Trust owned an 85 percent leasehold interest in such property rather than a 100 percent interest, as originally believed. Although real estate counsel for Watkins and Wilwat were in the process of taking remedial action, because the correction could not be accomplished prior to the date of the sale transaction, Watkins agreed to pay the Trust the full fair market value for the property, as valued by the independent appraisers in fee simple, in exchange for the Trust's agreement to cooperate with Watkins

would be paid in cash and the Trust would not be required to pay any real estate fees or commissions in connection therewith. Because the sale transaction effectively terminated the New Lease by operation of law, the parties also wish to replace PTE 85–131 with a new exemption. Accordingly, administrative exemptive relief is requested from the Department. If granted, the exemption would be effective as of May 8, 2002.

The Trust, the Trustee and Watkins proposed to effect the sale transaction because it would allow the Trust to achieve greater diversification, liquidity, and the potential to obtain a higher rate of return on its investments. Since the Plans participating in the Trust would be merged into separate 401(k) plans providing for participant-directed investments, the parties did not deem the subject property to be a suitable investment option due to its illiquidity. Moreover, the parties noted that the Building had appreciated substantially in value at rates that were above historical averages which might not continue in the future. Finally, the parties believed that the Building was of limited use and, should Watkins decide to move its headquarters or otherwise decline to renew the New Lease, the Trust might have difficulty marketing its interest in the Building and realizing its full value.

III. The Appraisal

The Building was appraised by Messrs. Quentin Ball, MAI, and Philip R. Thomas, Senior Appraiser, who are qualified, independent appraisers affiliated with the commercial real estate appraisal firm of Kirkland & Company, located in Atlanta, Georgia. In a appraisal report dated November 27, 2001, the appraisers, using the Income Approach to valuation, placed the fair market value of a fee simple interest in the Building and the Improvements (as if not encumbered by the Ground Lease) at $1,900,000 as of November 26, 2001.[4]

The appraisers updated their appraisal report prior to the closing of the sale transaction. By letter dated May 8, 2002, the appraisers, while noting new construction within the vicinity of the property which they believed to be indicative of a strong and improving economy, concluded that there had been no change in the value of the property as set forth in their original appraisal report.

IV. Views of the Trustee/Independent Fiduciary

As stated above, the Trustee had been acting on behalf of the Trust as the independent fiduciary for the New Lease. Serving in this capacity was SunTrust, a banking subsidiary of SunTrust Banks, Inc., the tenth largest financial services holding company in the United States. In its independent fiduciary statement, the Trustee represented that it had been acting as a corporate fiduciary for more than 100 years, had approximately $130 million in fiduciary assets in its custody, and served as a fiduciary or custodian to more than 1,700 qualified retirement plans. The Trustee also asserted that although it conducted an ongoing deposit and lending business with Watkins and its affiliates, such deposits and loans represented less than one percent of its total deposits and loans. Further, the Trustee stated that it understood and acknowledged its duties, responsibilities and liabilities under the Act in serving as an independent fiduciary for the Trust.

The Trustee represented that the sale transaction compared favorably with the terms of similar transactions between unrelated parties because the Trust's leasehold interests in the Building, the Improvements and the Ground Lease would be sold at the appraised value of a fee simple interest and without the payment of any real estate fees or commissions by the Trust. Moreover, the Trustee explained that it had relied upon the independent appraisers to identify and reconcile sales of comparable properties in their preparation of the initial appraisal report. On the basis of such information, the Trustee concluded that the appraisal had been conducted by the appraisers in a reasonable manner.

The Trustee also believed the sale transaction would be in the best interests of the Trust and its participants and beneficiaries for the following reasons:

- The proposed modification of the Trust into participant-directed accounts would make accounting and participant direction virtually impossible due to the indivisible nature of the subject property.
- The sale transaction would compare favorably with other sales of property which might be achieved in the market place.
- The sale transaction would permit the conversion of an illiquid investment with material maintenance costs (i.e., the underlying New Lease payments and associated Trustee monitoring) into cash which could be invested in lower-maintenance assets.
- The sale transaction would eliminate the conflict of interest and associated administrative burdens of ongoing special supervision implicit in the Trust's holding of employer real property.
- The sale transaction would enable the Trust to realize appreciation in the property, the continuation of which could not be assured in the current economic climate.
- The sale transaction would eliminate a 6 percent concentration of the Trust's assets in two adjacent parcels of real estate.

Before forming its opinion, the Trustee stated that it had examined the Trust's overall investment portfolio, considered the liquidity requirements of the Plans participating therein, examined the diversification of each Plan's assets in light of the proposed transaction, and considered whether the proposed transaction complies with the Trust's investment objectives and policies. The Trustee explained that it would monitor the transaction and take all appropriate actions, if required, to safeguard the interests of the Trust.

V. The Sale

On May 8, 2002, the Trust sold its leasehold interests in the Building, the Improvements and the Ground Lease to Watkins for $1,900,000, which reflected the independently appraised value of such property, as determined by the independent appraisers in their initial and updated appraisal reports. The sales price was greater than the Trust's total investment return on the property of $474,952. Watkins paid the consideration in cash and the Trust did not pay any real estate fees or commissions in connection with the sale transaction. In addition, the Trustee monitored the transaction on behalf of the Trust.

VI. General Conditions

If granted, this proposed exemption will be subject to the following general conditions:

(a) All terms and conditions of the sale were at least as favorable to the Trust as those obtainable in an arm's length transaction with an unrelated party;

(b) The sale was a one-time transaction for cash;

(c) The fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease was determined by qualified,

in obtaining an appropriate correction of the chain of title and, if necessary, conveying the remaining 15 percent leasehold interest in the property to Watkins after the closing of the sale.

[4] It is represented that the fee simple valuation of the Building and the Improvements was more beneficial to the Trust than a leased fee interest valuation because the latter valuation did not take into consideration the Option for the Land underlying the Ground Lease.

independent appraisers in initial and updated appraisal reports;

(d) The Trust did not pay any real estate fees, commissions, costs or other expenses in connection with the sale;

(e) The Trust received, as consideration for the sale, no less than the greater of the fair market value of its leasehold interests in the Building, the Improvements and the Ground Lease, as of the date of the sale;

(f) In the event the Trust could not obtain a release from the owner of the Ground Lease from its obligations thereunder upon the completion of the sale, Watkins agreed to assume all liabilities under such lease and indemnify the Trust against any liability to the owner of the Ground Lease; and

(g) The Trustee, as the independent fiduciary for the Trust with respect to the sale, determined that such transaction was in the best interest of the Trust and was protective of the participants and beneficiaries of the Trust, and monitored such transaction on behalf of the Trust.

Notice to Interested Persons

Notice of the proposed exemption will be sent by first-class mail to each participant of the Plans participating in the Trust within 15 days of the publication of the proposed exemption in the **Federal Register**. The notification will contain a copy of the proposed exemption as published in the **Federal Register**, and a copy of the supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement, will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Comments and hearing requests are due within 45 days of the publication of the notice in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the facts and representations set forth in the notice of proposed exemption relating to PTE 85–131 and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption by regular mail, electronic mail or facsimile to the addresses or facsimile number noted above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, August 10, 1990).

If the proposed exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective May 8, 2002, to the sale by the Watkins Master Trust (the Trust) of its leasehold interests in certain improved real property, consisting of a building (the Building), the improvements constructed thereon (the Improvements), and ground lease (the Ground Lease), to Watkins Associated Industries, Inc. (Watkins), a party in interest with respect to the Trust, in connection with an amendment to an option to purchase provision contained in a written lease between the Trust and Watkins, as described in Prohibited Transaction Exemption 85–131 (50 FR 32333, August 9, 1985).

This proposed exemption is subject to the following conditions:

(a) All terms and conditions of the sale were at least as favorable to the Trust as those obtainable in an arm's length transaction with an unrelated party;

(b) The sale was a one-time transaction for cash;

(c) The fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease was determined by qualified, independent appraisers in initial and updated appraisal reports;

(d) The Trust did not pay any real estate fees, commissions, costs or other expenses in connection with the sale;

(e) The Trust received, as consideration for the sale, no less than the greater of the fair market value of its leasehold interests in the Building, the Improvements and the Ground Lease, as of the date of the sale;

(f) In the event the Trust could not obtain a release from the owner of the Ground Lease from its obligations thereunder upon the completion of the sale, Watkins agreed to assume all liabilities under such lease and indemnify the Trust against any liability to the owner of the Ground Lease; and

(g) The Trustee, as the independent fiduciary for the Trust with respect to the sale, determined that such transaction was in the best interest of the Trust and was protective of the participants and beneficiaries of the Trust, and monitored such transaction on behalf of the Trust.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of May 8, 2002.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of

the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 85–131, refer to the proposed exemption and the grant notice which are cited above.

Signed at Washington, DC, this 13th day of June, 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–15318 Filed 6–17–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–11038]

Notice of Proposed Individual Exemption To Amend and Replace Prohibited Transaction Exemption (PTE) 90–15, Involving the Watkins Master Trust (the Trust), Located in Atlanta, GA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed individual exemption to modify and replace PTE 90–15.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption which, if granted, would amend and replace PTE 90–15 (55 FR 12967, April 6, 1990). PTE 90–15 is an individual exemption providing relief, since September 20, 1989, for (1) the leasing of office space in a commercial office building (the Building) by the Trust to Wilwat Properties, Inc. (Wilwat), a party in interest with respect to the plans (the Plans) participating in the Trust under the provisions of a written lease (the New Lease); and (2) the possible cash purchase of the Trust's interest in the property by Wilwat.

If granted, the proposed exemption would modify an option to purchase provision in the New Lease by allowing Wilwat to acquire the Trust's leasehold interests in the Building, including the improvements constructed thereon (the Improvements), and the Trust's interest in a ground lease (the Ground Lease) on May 8, 2002, instead of at any time during the final six months of the New Lease renewal term ending on December 31, 2008. In addition, the proposed exemption would replace PTE 90–15, which expired by operation of law upon the consummation of the sale. If granted, the proposed exemption would affect participants and beneficiaries of, and fiduciaries with respect to the Trust.

DATES: Written comments and requests for a public hearing should be received by the Department on or before August 2, 2002.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of May 8, 2002.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington DC 20210, (Attention: Notice of Proposed Individual Exemption to Amend and Replace Prohibited Transaction Exemption 90–15, Involving the Watkins Master Trust; Application No. D–11038).

Interested persons are also invited to submit comments and/or hearing request to the Department by facsimile to (202) 219–0204 or by electronic mail to *moffittb@pwba.dol.gov* by the end of the scheduled comment period. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8556. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that will amend and replace PTE 90–15. PTE 90–15 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code.

The proposed exemption has been requested in an application filed on behalf of the Trust and Wilwat,[1] pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is being issued solely by the Department.

I. Background

As stated above, PTE 90–15 provides exemptive relief from the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, with respect to (1) the leasing, by the Trust to Wilwat, of office space in a building located in Atlanta, Georgia and (2) the potential cash purchase of the Trust's interest in the property by Wilwat. PTE 90–15 is effective from September 20, 1989 until May 8, 2002, the date of the sale transaction described herein.

According to the Summary of Facts and Representations (55 FR 2900, January 29, 1990) underlying PTE 90–15, the Trust is a master trust which was originally established in 1984 to hold, manage and administer the assets of five defined contribution pension plans sponsored by Watkins, its affiliates and subsidiaries. Watkins, a Florida corporation engaged in diverse service and manufacturing enterprises, maintains its principal place of business in Atlanta, Georgia. At present, only three Plans participate in the Trust. They are the Watkins Associated Industries, Inc. Profit Sharing Plan, the LandSpan, Inc. Profit Sharing Plan, and the Southern Concrete Construction Company Profit Sharing Plan. Each of the participating Plans owns an undivided, *pro rata* interest in the assets of the Trust. As of December 31, 2000, the Trust held total assets of $39,752,458. The current trustee (the Trustee) of the Trust is SunTrust Bank, N.A. (SunTrust) of Atlanta, Georgia.

Formerly included among the assets of the Trust was a leasehold interest in a commercial office building containing

[1] The Department is also considering an exemption request (D–11036) that has been filed on behalf of Watkins Associated Industries, Inc. (Watkins), the sponsor of the Trust. In their request, Watkins and the Trust are seeking exemptive relief which is similar to that contemplated herein.

approximately 9,700 net square feet of space, together with parking facilities. The Building is located at 1940 Monroe Drive, Atlanta, Georgia, and is situated on a parcel of commercially-zoned real land (the Land). The Building is not located in close proximity to other real property that is owned by Watkins, Wilwat or their principals.

The Land is owned by William L. Monroe, Sr., an unrelated party, and was being leased to the Trust under the provisions of the Ground Lease. As lessee under the Ground Lease, the Trust had an estate for years under Georgia law. The unrelated lessor had a reversion in the demised premises upon the termination of such lease.

As initially executed in 1958, the Ground Lease was due to expire in 2019 but that term was extended until 2058. The Ground Lease was a net lease requiring the lessee to incur such expenses as utilities, real estate taxes, assessments and maintenance. Before the sale transaction that is described in this proposal was consummated, the annual rental paid by the Trust under the Ground Lease to the lessor was $1,425.

The Building was constructed on the Land after the execution of the Ground Lease by a predecessor lessee to Wilwat. The Ground Lease provided that the Building and all subsequent Improvements placed on the Land would revert to the unrelated lessor upon the termination of such lease.

Commencing in 1981, three subsidiaries of Watkins (i.e., Wilwat, Provident Security Life Insurance Company, and Waco Fire and Casualty Insurance Company) (collectively, the Subsidiaries) commenced leasing and occupying space in the Building. These leases were the subject of PTE 83–27 (48 FR 8613, March 1, 1983). Although the leases expired during June 1989, in response to proposals made by Wilwat, Trust Company Bank of Atlanta, Georgia (TCB), the former trustee of the Trust, approved the holding over of the Subsidiaries in the Building beyond the expiration of the initial leases in expectation of new leasing arrangements. Therefore, Wilwat and TCB executed a new lease, effective June 14, 1989, which provided for the continued leasing of the Building by the Subsidiaries to the Trust. For purposes of administrative convenience, the lessee interests of the Subsidiaries in the Building were consolidated and were represented by Wilwat as the sole named lessee under the New Lease.

PTE 90–15 also provided that the Trust's interests would be represented for all purposes by the Trustee. At the time the exemption was issued, TCB served in this capacity.

The New Lease was a triple net lease under which Wilwat was obligated to pay for all expenses of utilities, maintenance and repair, and for taxes relating to the Building. The New Lease commenced with an initial term of four years and six months, effective June 15, 1989, and it was renewable for up to three additional terms, each of five years' duration, upon the approval of the Trustee. The New Lease was renewed for all three of the possible additional terms and was due to expire on December 31, 2008.

The New Lease required monthly rental payments of no less than the Building's fair market rental value.[2] The rent was adjusted on July 1 every three years for the duration of the New Lease to reflect the current fair market rental value of the Building as determined by a qualified, independent appraiser approved by the Trustee. In no event, however, could the rent as so adjusted, be less than the initial rental under the New Lease. Prior to the sale transaction, the contractual rental amount paid by Wilwat to the Trust under the New Lease was $6,050 per month or $72,600 per year.

The New Lease required Wilwat to indemnify and hold harmless the Trust against any and all claims arising from the use of the Building and to obtain and maintain in force a policy of full public liability coverage for personal injury and property damage. Wilwat was also required to obtain and maintain a policy of all risk casualty replacement loss insurance in an amount of no less than the Building's full insurable value.

Wilwat was required under the New Lease to obtain the Trustee's approval for any Improvements to or alterations of the Building. The New Lease further provided that any Improvements constructed thereon were to remain the property of Wilwat at the conclusion of such lease.[3]

The New Lease also contained a provision (the Option) granting Wilwat a limited right to purchase the Building and the Improvements from the Trust. The Option provided that Wilwat could propose a purchase of the Building and the Improvements from the Trust at any time during the final six months of the initial term of the New Lease or of any renewal term. Any purchase of the Building and the Improvements by Wilwat under the Option required the approval of the Trustee and the payment of a cash purchase price equal to the greater of the fair market value of such property as of the date of the sale or the Trust's total investment return with respect to such property. In the event of sale under the Option provision, Wilwat would be required to pay all costs and expenses associated with the transaction.

The transactions described in PTE 90–15 were monitored by the Trustee, as independent fiduciary for the Trust. Formerly, TCB served in this capacity until it was merged with SunBank to form SunTrust. During the entire period of Trustee/independent fiduciary succession, the Trust was, at all times, represented by an independent fiduciary.

As Trustee and independent fiduciary, TCB determined that the New Lease was in the best interests of the participants and beneficiaries of the Plans participating in the Trust because it believed such investment would provide the Trust with a high annual yield that would be competitive with any other investments made on behalf of the Trust. TCB agreed to continue monitoring lease arrangements made on behalf of the Trust, to inspect the Building annually, ensure that the Building was adequately insured, and to determine that taxes and rents would be collected in a timely manner. Further, TCB represented that it would pursue appropriate enforcement measures on behalf of the Trust with respect to the Trust's rights under the New Lease.

[2] The initial rent through June 30, 1991 was set at $51,000 per year. The rental amount was payable in monthly installments of $4,250, which represented the fair market rental value of the Building as determined by John Booth, MAI, a qualified, independent appraiser from Atlanta, Georgia. Mr. Booth's calculation of the Building's fair market rental value included a vacancy and collection allowance of five percent, constituting a deduction of $5,789 from the Building's potential gross income on which the appraiser based his fair market value analysis. Wilwat represented that this allowance deduction would be disregarded for purposes of rental determinations under the New Lease and that the initial rental amount would be recalculated.

As a result, the initial rental under the New Lease was readjusted to $56,835 per year or $4,736 per month. On September 20, 1989, the effective date of PTE 90–15, Wilwat agreed to pay the Trust the difference between the rental actually paid since June 15, 1989, pursuant to Mr. Booth's appraisal, and the recalculated initial rent, including the payment of reasonable interest at a rate determined by the Trustee. In addition, Wilwat represented that within sixty days of the issuance of PTE 90–15, it would pay appropriate excise taxes to the Internal Revenue Service resulting from the rental payment deficiencies.

[3] It should be noted that despite the New Lease provision granting title to the Improvements constructed in the Building to Wilwat, the Trust and Wilwat agreed to include the value of the Improvements in the determination of the sales price for the Trust's leasehold interests in the Building and the Ground Lease.

II. Amendment and Replacement of PTE 90–15

Over the period of time that the Trust was a party to the Ground Lease and the New Lease, there were no defaults or delinquencies in rental payments made thereunder. The Trust did, however, expend $39,911 in rental payments under the Ground Lease since the inception of such lease, whereas the cost of the Improvements, ranging from the installation of a new air conditioning system in the Building to the renovation of offices, was borne by Wilwat. The Trust also received rental income under the New Lease totaling $661,337. Since the Trust's cost basis in the Building was estimated at $422,735, its total investment return with respect to such property (net of acquisition and holding costs) was approximately $198,691 [$661,337 − ($422,735 + $39,911)].

On behalf of the Trust, the Trustee and Wilwat seek to amend the New Lease, thereby permitting the retroactive sale, by the Trust, of its leasehold interests in the Building, the Improvements and the Ground Lease to Wilwat.[4] Because the sale transaction effectively terminated the New Lease by operation of law, the parties wish to replace PTE 90–15 with a new exemption. Accordingly, administrative exemptive relief is requested from the Department. If granted, the exemption would be effective as of May 8, 2002.

As consideration for the sale transaction, the Trust would receive (a) the greater of the fair market value of such property as of the date of the sale or (b) its total investment in such property. The consideration would be paid in cash and the Trust would not be required to pay any real estate fees or commissions in connection therewith.

The Trust, the Trustee and Wilwat proposed to effect the sale transaction because it would allow the Trust to achieve greater diversification, liquidity, and the potential to obtain a higher rate of return on its investments. Since the Plans participating in the Trust would be merged into separate 401(k) plans providing for participant-directed investments, the parties did not deem the subject property to be a suitable investment option under the merger arrangement due to its illiquidity. Moreover, the parties noted that the Building had appreciated substantially in value at rates that were above historical averages which might not continue in the future. Finally, the parties believed that the Building was of limited use and, should Watkins decide to move its headquarters or otherwise decline to renew the New Lease, the Trust might have difficulty marketing its interest in the Building and realizing its full value.

III. The Appraisal

The Building was appraised by Messrs. Quentin Ball, MAI, and Philip R. Thomas, Senior Appraiser, who are qualified, independent appraisers affiliated with the commercial real estate appraisal firm of Kirkland & Company, located in Atlanta, Georgia. In a appraisal report dated November 27, 2001, the appraisers, using the Income Approach to valuation, placed the fair market value of a fee simple interest in the Building and the Improvements (as if not encumbered by the Ground Lease) at $1,050,000 as of November 26, 2001.[5]

The appraisers updated their appraisal report prior to the closing of the sale transaction. By letter dated May 8, 2002, the appraisers, while noting new construction within the vicinity of the property which they believed to be indicative of a strong and improving economy, concluded that there had been no change in the value of the property as set forth in their original appraisal report.

IV. Views of the Trustee/Independent Fiduciary

As stated above, the Trustee had been acting on behalf of the Trust as the independent fiduciary for the New Lease. Serving in this capacity was SunTrust, a banking subsidiary of SunTrust Banks, Inc., the tenth largest financial services holding company in the United States. In its independent fiduciary statement, the Trustee represented that it had been acting as a corporate fiduciary for more than 100 years, had approximately $130 million in fiduciary assets in its custody, and served as a fiduciary or custodian to more than 1,700 qualified retirement plans. The Trustee also asserted that although it conducted an ongoing deposit and lending business with Watkins and its affiliates, such deposits and loans represented less than one percent of its total deposits and loans. Further, the Trustee stated that it understood and acknowledged its duties, responsibilities and liabilities under the Act in serving as an independent fiduciary for the Trust.

The Trustee represented that the sale transaction compared favorably with the terms of similar transactions between unrelated parties because the Trust's leasehold interests in the Building, the Improvements and the Ground Lease would be sold at the appraised value of a fee simple interest and without the payment of any real estate fees or commissions by the Trust. Moreover, the Trustee explained that it relied upon the independent appraisers to identify and reconcile sales of comparable properties in their preparation of their initial appraisal report. On the basis of such information, the Trustee concluded that the appraisal had been conducted by the appraisers in a reasonable manner.

The Trustee also believed the sale transaction would be in the best interests of the Trust and its participants and beneficiaries for the following reasons:

- The proposed modification of the Trust into participant-directed accounts would make accounting and participant direction virtually impossible due to the indivisible nature of the subject property.
- The transaction would compare favorably with other sales of property which might be achieved in the market place.
- The sale transaction would permit the conversion of an illiquid investment with material maintenance costs (i.e., the underlying New Lease payments and associated Trustee monitoring) into cash which could be invested in lower-maintenance assets.
- The sale transaction would eliminate the conflict of interest and associated administrative burdens of ongoing special supervision implicit in the Trust's holding of employer real property.
- The sale transaction would enable the Trust to realize appreciation in the property, the continuation of which could not be assured in the current economic climate.
- The sale transaction would eliminate a 6 percent concentration of the Trust's assets in two adjacent parcels of real estate.

Before forming its opinion, the Trustee stated that it had examined the Trust's overall investment portfolio, considered the liquidity requirements of the Plans participating therein, examined the diversification of each Plan's assets in light of the proposed transaction, and considered whether the

[4] It is represented that the Trust would seek a release from the owner of the Ground Lease from its obligations thereunder upon the completion of the proposed sale. However, regardless of whether the Trust could obtain such a release from the owner, it is represented that Wilwat would assume all of the Trust's liabilities under this lease and indemnify the Trust against any liability to the owner of the Ground Lease.

[5] It is represented that the fee simple valuation of the Building and the Improvements was more beneficial to the Trust than a leased fee interest valuation because the latter valuation did not take into consideration the Trust's leasehold interest in the Ground Lease.

transaction would comply with the Trust's investment objectives and policies. The Trustee explained that it would monitor the transaction and take all appropriate actions, if required, to safeguard the interests of the Trust.

V. The Sale

On May 8, 2002, the Trust sold its leasehold interests in the Building, the Improvements and the Ground Lease to Wilwat for $1,050,000, which reflected the independently appraised value of such property, as determined by the independent appraisers in their initial and updated appraisal reports. The sales price was greater than the Trust's total investment return with respect to the property of $198,691. Wilwat paid the consideration in cash and the Trust did not pay any real estate fees or commissions in connection with the sale transaction. In addition, the Trustee monitored the transaction on behalf of the Trust.

VI. General Conditions

If granted, this proposed exemption will be subject to the following general conditions:

(a) All terms and conditions of the sale were at least as favorable to the Trust as those obtainable in an arm's length transaction with an unrelated party;

(b) The sale was a one-time transaction for cash;

(c) The fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease was determined by qualified, independent appraisers in initial and updated appraisal reports;

(d) The Trust did not pay any real estate fees, commissions, costs or other expenses in connection with the sale;

(e) The Trust received, as consideration for the sale, an amount that was no less than the greater of (1) the fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease; or (2) the Trust's total investment in such property, as of the date of the sale;

(f) In the event the Trust could not obtain a release from the owner of the Ground Lease from its obligations thereunder upon the completion of the proposed sale, Wilwat agreed to assume all liabilities under such lease and would indemnify the Trust against any liability to the owner of the Ground Lease; and

(g) The Trustee, as the independent fiduciary for the Trust with respect to the sale, determined that such transaction was in the best interest of the Trust and was protective of the participants and beneficiaries of the Trust, and monitored such transaction on behalf of the Trust.

Notice to Interested Persons

Notice of the proposed exemption will be sent by first-class mail to each participant of the Plans participating in the Trust within 15 days of the publication of the proposed exemption in the **Federal Register**. The notification will contain a copy of the proposed exemption as published in the **Federal Register**, and a copy of the supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement, will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Comments and hearing requests are due within 45 days of the publication of the notice in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the facts and representations set forth in the notice of proposed exemption relating to PTE 90–15 and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption by regular mail, electronic mail or facsimile to the addresses or facsimile number noted above, within the timeframe set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

If the proposed exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective May 8, 2002, to the sale by the Watkins Master Trust (the Trust) of its leasehold interests in certain improved real property, consisting of a building (the Building), the improvements constructed thereon (the Improvements), and ground lease (the Ground Lease), to Wilwat Properties, Inc. (Wilwat), a party in interest with respect to the Trust, in connection with an amendment to an option to purchase provision contained in a written lease between the Trust and Wilwat, as described in Prohibited Transaction Exemption 90–15 (55 FR 12967, April 6, 1990).

This proposed exemption is subject to the following conditions:

(a) All terms and conditions of the sale were at least as favorable to the Trust as those obtainable in an arm's

length transaction with an unrelated party;

(b) The sale was a one-time transaction for cash;

(c) The fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease was determined by qualified, independent appraisers in initial and updated appraisal reports;

(d) The Trust did not pay any real estate fees, commissions, costs or other expenses in connection with the sale;

(e) The Trust received, as consideration for the sale, an amount that was no less than the greater of (1) the fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease; or (2) the Trust's total investment in such property, as of the date of the sale;

(f) In the event the Trust could not obtain a release from the owner of the Ground Lease from its obligations thereunder upon the completion of the sale, Wilwat agreed to assume all liabilities under such lease and would indemnify the Trust against any liability to the owner of the Ground Lease; and

(g) The Trustee, as the independent fiduciary for the Trust with respect to the sale, determined that such transaction was in the best interest of the Trust and was protective of the participants and beneficiaries of the Trust, and monitored such transaction on behalf of the Trust.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of May 8, 2002.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 90–15, refer to the proposed exemption and the grant notice which are cited above.

Signed at Washington, DC, this 13th day of June 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–15319 Filed 6–17–02; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–075)]

National Environmental Policy Act; Final Environmental Assessment for Launch of NASA Routine Payloads on Expendable Launch Vehicles from Cape Canaveral Air Force Station Florida and Vandenberg Air Force Base California

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Finding of No Significant Impact.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA has made a Finding of No Significant Impact (FONSI) with respect to the proposed Launch of NASA Routine Payloads on Expendable Launch Vehicles from Cape Canaveral Air Force Station (CCAFS), Florida, and Vandenberg Air Force Base (VAFB), California, during the period 2002 through 2012. Spacecraft that are designated NASA routine payloads would meet the criteria described by a Routine Payload Checklist (RPC) to ensure that the spacecraft, their launch and operations, and their decommissioning would not present any new or substantial environmental and safety concerns. If a candidate mission were to exceed the specific RPC criteria, further environmental review would be required. This FONSI also includes three individual science missions that meet the RPC criteria and are described in the associated Final Environmental Assessment (Final EA): the Comet Nucleus Tour (CONTOUR) mission, which would launch on a Delta II 2425 from CCAFS, Florida, in July 2002, the Mercury Surface Space Environment, Geochemistry, and Ranging (MESSENGER) mission, which would launch on a Delta II 2925H–9.5 from CCAFS in March 2004, and the Deep Impact mission, which would launch on a Delta II 2925 from CCAFS in January 2004.

DATES: This action is effective as of June 18, 2002.

ADDRESSES: The Final EA may be reviewed at the locations listed under the supplementary information in this notice.

FOR FURTHER INFORMATION CONTACT: Mark R. Dahl, Program Executive, NASA Headquarters, Code SM, Washington, DC 20546 or at (202)–358–4800. The Final EA is also available in Acrobat® format at *http://spacescience.nasa.gov/admin/pubs/routine—EA/index.htm.*

SUPPLEMENTARY INFORMATION: NASA initiated a 30-day public review and comment period for the Draft Environmental Assessment for Launch of NASA Routine Payloads on Expendable Launch Vehicles from Cape Canaveral Air Force Station Florida and Vandenberg Air Force Base California (67 FR 11518–11519, March 14, 2002). Comments and responses are compiled in a new Appendix D of, and text changes were incorporated in the Final EA where appropriate. NASA has reviewed the Final EA and has determined that it represents an accurate and adequate analysis of the scope and level of associated environmental impacts. The Final EA is incorporated by reference in this FONSI.

NASA proposes to launch a variety of scientific missions that are designated NASA routine payloads on expendable launch vehicles (ELVs). The spacecraft and their associated launches (i.e., missions) would be considered to be routine if they would present no new or substantial environmental impacts, and their design and characteristics would not exceed the specific criteria described by the RPC. Such missions are referred to as NASA routine payload spacecraft. Once a sufficiently detailed design concept is proposed for a NASA science mission, NASA would evaluate the proposed design against the RPC to determine if the proposed design is within the definition of a routine payload as described in the Final EA. The RPC includes an envelope spacecraft description, which includes flight components, materials and associated quantities, and flight systems representing a comprehensive bounding reference design for routine payload spacecraft. A proposed spacecraft that presents equal or lesser values of potentially hazardous materials or sources in comparison to the envelope spacecraft description may be considered NASA routine payload spacecraft. If the mission were to be defined as a routine payload following an evaluation against the envelope spacecraft description, this finding would be documented by processing a Record of Environmental Consideration (REC) in accordance with NASA's procedures and guidelines, citing this Final EA. If the proposed mission were to be found to be inconsistent with the NASA routine payload categorization, plans would begin for consideration of

additional environmental documentation.

Routine payload spacecraft would be placed into Earth orbit or into Earth-escape trajectories (i.e., solar orbit) using one of a group of ELVs routinely launched from CCAFS, Florida, and VAFB, California. The use of these ELVs and launch sites for the launch of the routine payload spacecraft has been analyzed and is within the scope of existing NEPA documents for operations at these launch facilities. The specific ELV and trajectory selected for a particular mission would depend on the specific mission objectives and requirements for that routine payload mission. Routine payload spacecraft final assembly, propellant loading, and checkout of payload systems would be performed at the Kennedy Space Center (KSC), Florida, (launch processing center for NASA spacecraft to be launched at CCAFS) or VAFB and their associated payload processing facilities. The spacecraft would then be transported to an existing space launch complex at VAFB or CCAFS where it would be integrated with the launch vehicle. Due to varying payload weights and mission specific requirements, NASA routine payload spacecraft may require different launch vehicles.

The ELVs proposed for launching the routine payload spacecraft represent domestic (U.S.) ELVs that would be suitable for launching the routine payload spacecraft, potentially be available during the 2002–2012 period, have documented environmental impacts, and utilize existing launch facilities. The ELVs included in this action are the Atlas series, Delta series, Taurus, Athena series, Pegasus XL, and Titan II. These launch vehicles would accommodate the desired range of payload masses, provide the needed trajectory capabilities, and provide highly reliable launch services. Individual ELVs would be carefully matched to the launch requirements of each particular routine payload spacecraft.

The launch vehicles selected for summary in the Final EA are the Atlas V (largest solids from CCAFS), Delta IV (largest solids from VAFB), Delta II 2925 (largest hypergolic propellant load from CCAFS), and the Titan II (largest hypergolic propellant load from VAFB). These ELVs represent the largest expected impact to the human environment associated with the proposed action. For normal launches, the environmental impacts would be associated with exhaust emissions from the launch vehicles. The primary exhaust emissions produced by the solid propellant and first stage include carbon monoxide, hydrochloric acid, aluminum oxide in soluble and insoluble forms, carbon dioxide, and deluge water mixed with propellant by-products. The primary emission products from the liquid engines include carbon dioxide, carbon monoxide, water vapor, oxides of nitrogen, and carbon particulates. Air impacts will be short-term and not substantial. Short-term water quality and noise impacts, as well as short-term effects on wetlands, plants, and animals, would occur in the vicinity of the launch complex. These short-term impacts are of a nature to be self-correcting, and none of these effects would be substantial. There would be no impacts on threatened or endangered species or critical habitat, cultural resources, wetlands, or floodplains. Launch accident scenarios have also been addressed and indicate no potential for substantial environmental impact to the human environment. The launch of NASA routine payloads on expendable launch vehicles would not increase launch rates at CCAFS and VAFB above existing or previously approved and documented levels.

Alternatives to the proposed action that were evaluated include: (1) Utilizing a foreign launch vehicle or, (2) NASA would not launch spacecraft missions defined as routine payloads (the ''no action'' alternative). The nature of environmental impacts, payload processing, launch sites, and other related information for foreign launch systems is generally not as well known or as well documented as for launches from the U. S., and would require additional review and environmental documentation. In addition, U.S. Government policy (NASA Policy Directive NPD 8610.7) requires that the launch of U.S. Government-sponsored spacecraft utilize all reasonable sources of U.S. launch services. Therefore, foreign launch vehicles were not considered reasonable alternatives for the use of routine payload spacecraft. The No-Action alternative would mean that NASA would then propose spacecraft missions for individualized review under NEPA. Duplicate analyses and redundant documentation for missions that would otherwise meet the RPC criteria would not present any new information or identify any substantially different environmental impacts.

NASA routine payload spacecraft would follow the NASA guidelines regarding orbital debris and minimizing the risk of human casualty for uncontrolled reentry into the Earth's atmosphere. None of the NASA routine payload missions covered under the Final EA will have radioactive materials aboard the spacecraft, except for the possibility of very small quantities, limited to the approval authority level of the NASA Office of Safety and Mission Assurance, Nuclear Flight Safety Assurance Manager, used on certain missions typically for instrumentation purposes. Consequently, no potential adverse impacts from radioactive substances are anticipated. The RPC provides a set of questions that must be addressed in determining whether or not a proposed future NASA routine payload mission falls within the scope of the Final EA and this FONSI. No other individual or cumulative impacts of environmental concern have been identified.

The CONTOUR mission would send a spacecraft to flyby at least two short-period comets Encke and Schwassmann-Wachmann 3. Four instruments would image and spectrally map portions of the comet nucleus and measure the composition of gas and dust particles surrounding the comet. The CONTOUR spacecraft would be launched from CCAFS on a Delta II 2425 during July 2002. Several Earth gravity-assist flybys would be used to shape CONTOUR's trajectory toward the comet encounters. The CONTOUR mission meets the RPC criteria and the launch of the Delta II 2425 launch vehicle is within the previously approved and permitted launch rates. The MESSENGER mission would place a spacecraft in orbit around the planet Mercury. Eight instruments would study Mercury's internal structure, composition, geology, atmosphere, magnetic field, and interaction with the solar wind. The MESSENGER spacecraft would be launched from CCAFS on a Delta II 2925H–9.5 during March 2004 into a direct interplanetary trajectory. The MESSENGER mission meets the RPC criteria and the launch of the Delta II 2925H–9.5 launch vehicle is within the previously approved and permitted launch rates. The Deep Impact mission would investigate the physical and chemical characteristics of the comet Temple I by excavating a large crater in the comet's surface using a high-velocity copper impactor. The Deep Impact spacecraft would carry the impactor and high and medium resolution instrument to collect multi-spectral images of the comet's surface before and after the impactor's collision. After completion of the Temple I encounter, the flyby spacecraft will remain in solar orbit. The Deep Impact spacecraft would be launched from CCAFS on a Delta II 2925 during January 2004. The Deep Impact mission meets the RPC criteria and the launch of the Delta II 2925 launch

vehicle is within the previously approved and permitted launch rates.

The level and scope of environmental impacts associated with the launch of NASA routine payload spacecraft are well within the envelope of impacts that have been addressed in previous FONSIs concerning other launch vehicles and spacecraft. NASA routine payload spacecraft would not increase launch rates nor utilize launch systems beyond the scope of approved programs at VAFB or CCAFS. No NASA routine payload specific processing or launch activities have been identified that would require new permits and/or mitigation measures beyond those currently in place or in coordination at VAFB and CCAFS. No significant new circumstances or information relevant to environmental concerns associated with the launch vehicle have been identified which would affect the earlier findings. As specific spacecraft and missions are fully defined, they will be reviewed against the RPC and the Final EA. If NASA determines that future payloads have the potential for substantially different environmental impacts, further environmental reviews will be conducted and documented, as appropriate. On the basis of the Final EA, NASA has determined that the environmental impacts associated with the proposed action and the specified missions identified as within the scope of the Final EA would not individually or cumulatively have a significant impact on the quality of the human environment.

The Final EA may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW., Washington, DC 20546 (202–358–0167).

(b) Spaceport USA, Room 2001, John F. Kennedy Space Center, Florida 32899. Please call Penny Myers beforehand at 321–867–9280 so that arrangements can be made.

(c) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

(d) Vandenberg Air Force Base, Technical Library, Building 7015, 806 13th Street, Vandenberg AFB, CA 93437.

The Final EA may also be examined at the following NASA Centers by contacting the appropriate Freedom of Information Act Office:

(e) NASA, Ames Research Center, Moffet Field, CA 94035 (650–604–1181).

(f) NASA, Dryden Flight Research Center, P.O. Box 273, Edwards, CA 93523 (661–258–3689).

(g) NASA, Glenn Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2755).

(h) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–6255).

(i) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(j) NASA, Langley Research Center, Hampton, VA 23681 (757–864–2497).

(k) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–1837).

(l) NASA, Stennis Space Center, MS 39529 (228–688–2164).

A limited number of hard copies of the Final EA are available for persons wishing a copy by contacting Mr. Dahl, at the address or telephone number indicated herein.

Edward J. Weiler,

Associate Administrator for Space Science.

Ghassem R. Asrar,

Associate Administrator for Earth Science.

[FR Doc. 02–15348 Filed 6–17–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting; Sunshine Act

Time and Date: 10 a.m., Thursday, June 20, 2002.

Place: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

Status: Open.

Matters to be Considered:

1. Request from a Federal Credit Union to Convert to a Community Charter.

2. Oregon's Member Business Loan Rule.

3. Proposed Rule: Part 704 of NCUA's Rules and Regulations, Corporate Credit Unions.

Time and Date: 9 a.m., Thursday, June 20, 2002.

Place: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

Status: Closed.

Matters to be Considered:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to Exemption (6).

2. Pilot Program Request pursuant to Part 703 of NCUA's Rules and Regulations. Closed pursuant to Exemptions (8), (9)(A)(ii), and 9(B).

Recess: 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone: 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–15387 Filed 6–13–02; 5:02 pm]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that three meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506 as follows:

Presenting: July 29–30, 2002, Room 716 (Creativity and Organizational Capacity categories). A portion of this meeting, from 11 a.m. to 12 p.m. on July 30th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5:45 p.m. on July 29th and from 9 a.m. to 11 a.m. and 12 p.m. to 1 p.m. on July 30th, will be closed.

Multidisciplinary: July 30–August 2, 2002, Room 716 (Creativity category). A portion of this meeting, from 11 a.m. to 12:30 p.m. on August 2nd, will be open to the public for policy discussion. The remaining portions of this meeting, from 2:30 p.m. to 6 p.m. on July 30th, from 9 a.m. to 6 p.m. on July 31st and August 1st, and from 9 a.m. to 11 a.m. and 12:30 p.m. to 4:30 p.m. on August 2nd, will be closed.

Multidisciplinary: August 6, 2002, Room 730 (Organizational Capacity category). A portion of this meeting, from 4:30 p.m. to 5:30 p.m., will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 4:30 p.m. and 5:30 p.m. to 6:30 p.m., will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: June 13, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 02–15347 Filed 6–17–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* June 27, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for History Museums, Historical Societies, and Professional Development, submitted to the Office of Challenge Grants at the May 1, 2002 deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. 02–15216 Filed 6–17–02; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Solicitation of Public Comments on Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the National Endowment for the Arts

AGENCY: National Endowment for the Arts.

ACTION: Notice and request for public comment.

SUMMARY: The National Endowment for the Arts (Endowment) announces that its draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the National Endowment for the Arts have been posted on the Endowment website, www.arts.gov. The Endowment invites public comments on its draft Guidelines and will consider the comments received in developing its final Guidelines.

DATES: Comments are due on or before July 15, 2002. Final Guidelines are to be published by October 1, 2002.

ADDRESSES: Submit comments to the Office of General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, *ogc@arts.endow.gov.*

FOR FURTHER INFORMATION CONTACT: Hope O'Keeffe, Acting General Counsel, telephone 202–682–5418, ogc@arts.endow.gov. Hearing-impaired individuals may contact the Endowment by TDD/TTY at 202–682–5496.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Pub. L. 106–554) requires each Federal agency to publish guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of the information it disseminates. Agency guidelines must be based on government-wide guidelines issued by the Office of Management and Budget (OMB). In compliance with this statutory requirement and OMB instructions, the Endowment has posted its draft Information Quality Guidelines on the Endowment's website (www.arts.gov).

The Guidelines describe the agency's procedures for ensuring the quality of information that it disseminates and the procedures by which an affected person may obtain correction of information disseminated by the Endowment that does not comply with the Guidelines. The Endowment invites public comments on its draft Guidelines and will consider the comments received in developing its proposed final Guidelines, which must be submitted to OMB for review. The agency's final Guidelines are to be published by October 1, 2002. Persons who cannot access the draft Guidelines through the Internet may request a paper or electronic copy by contacting the Office of the General Counsel.

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the National Endowment for the Arts

These Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the National Endowment for the Arts are prepared under the Treasury and General Government Appropriations Act for Fiscal Year 2001, Section 515(b), and are designed to ensure and maximize the quality, objectivity, utility and integrity of information disseminated by the Endowment.

1. The Endowment has adopted a basic standard of quality (including objectivity, utility, and integrity) as a performance goal for all information that it disseminates. The Endowment has taken appropriate steps to incorporate information quality criteria into Endowment information dissemination practices.

2. As a matter of good and effective agency information resources management, the Endowment reviews the quality (including the objectivity, utility, and integrity) of information before it is disseminated. Information quality is integral to every step of the Endowment's development of information, including creation, collection, maintenance, and dissemination. The Endowment substantiates the quality of the information it has disseminated through documentation or other means appropriate to the information.

3. Generally, the office disseminating the information, such as the Office of Communications, the Office of Policy Research & Analysis, the Office of Guidelines and Panel Operations, or the Office of Congressional Liaison, will be responsible for reviewing the quality of information before dissemination, with appropriate oversight by the Endowment's Chairman or the Chairman's designees. The originating offices will use internal peer reviews and other review mechanisms to ensure that disseminated information meets quality standards including objectivity, utility, and integrity in both presentation and substance. Each office is responsible for ensuring that the pre-dissemination review is performed and documented at a level appropriate for the type of information disseminated.

4. To facilitate citizen review, affected persons may seek and obtain, where appropriate, timely correction of information maintained and disseminated by the Endowment that does not comply with OMB or Endowment guidelines.

a. Requests for correction should be sent in writing, by mail, fax, or email to: Information Change Request, Office of General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5418, (202) 682–5572 (fax), *ogc@arts.endow.gov*.

b. The request should clearly identify the information asserted to be incorrect, including the name of the publication or other source of information, the date of issuance, and a detailed description of the information to be corrected. The request should state specifically why the information should be corrected and suggest specific changes.

c. The request should include the requester's name, mailing address, fax number, email address, and telephone number. The Endowment needs this information to respond to the request and to contact the requester as necessary.

d. If a request does not reasonably describe the information asserted to be incorrect, the Endowment may request additional information.

5. The Endowment will investigate and respond to requests for correction in a flexible manner, taking into consideration the nature and extent of the complaint, the nature and timeliness of the information involved, the significance of the correction to the use of the information, and the magnitude of the correction needed. Should the Endowment determine that a correction is necessary, appropriate responses might include personal contacts by letter or telephone, press releases, website postings, errata sheets in publications, or mass mailings to correct a widely disseminated error or address a frequently raised complaint.

6. The Endowment will generally notify the requester of the agency decision on whether and how any corrections will be made within 30 business days of receipt of the request. If the requester does not agree with the agency's decision regarding corrective action, the requester may file for reconsideration by the Chairman within 30 days of the Endowment's decision. Such reconsideration requests will generally be resolved within 45 business days.

7. The Endowment's pre-dissemination review, under paragraph 2, applies to information that the Endowment first disseminates on or after October 1, 2002. The Endowment's administrative mechanisms, under paragraph 4–6, apply to information that the Endowment disseminates on or after October 1, 2002, regardless of when the Endowment first disseminated the information.

8. The Chief Information Officer of the National Endowment for the Arts is responsible for Endowment compliance with predissemination review under these guidelines. The General Counsel of the National Endowment for the Arts is responsible for resolution of requests for correction.

9. On an annual fiscal-year basis, the Endowment will submit a report to the Director of OMB providing information (both quantitative and qualitative, where appropriate) on the number and nature of complaints received by the Endowment regarding Endowment compliance with these guidelines and how such complaints were resolved. The Endowment will submit these reports no later than January 1 of each following year, with the first report due January 1, 2004.

10. Definitions

a. ''Quality'' is an encompassing term comprising utility, objectivity, and integrity. Therefore, the guidelines sometimes refer to these four statutory terms, collectively, as ''quality.''

b. ''Utility'' refers to the usefulness of the information to its intended users, including the public. In assessing the usefulness of information that the Endowment disseminates to the public, the Endowment will consider the uses of the information not only from the perspective of the Endowment but also from the perspective of the public. As a result, when reproducibility and transparency of information are relevant for assessing the information's usefulness from the public's perspective, the Endowment will take care to ensure that reproducibility and transparency have been addressed in its review of the information.

c. ''Objectivity'' involves two distinct elements, presentation and substance.

(1) ''Objectivity'' includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation. Also, the Endowment will, where appropriate, identify the sources of the disseminated information (to the extent possible, consistent with confidentiality protections) and, in a scientific or statistical context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where appropriate, supporting data should have full, accurate, transparent documentation, and error sources affecting data quality should be identified and disclosed to users.

(2) In addition, ''objectivity'' involves a focus on ensuring accurate, reliable, and unbiased information.

(a) In a scientific or statistical context, the original or supporting data shall be generated, and the analytical results shall be developed, using sound statistical and research methods.

(b) If the results have been subject to formal, independent, external peer review, the information can generally be considered of acceptable objectivity.

(c) In those situations involving influential scientific or statistical information, the results must be capable of being substantially reproduced, if the original or supporting data are independently analyzed using the same models. Reproducibility does not mean that the original or supporting data have to be capable of being replicated

through new experiments, samples or tests.

(d) Making the data and models publicly available will assist in determining whether analytical results are capable of being substantially reproduced.

(3) These guidelines do not alter the otherwise applicable standards and procedures for determining when and how information is disclosed. Thus, the objectivity standard does not override other compelling interests, such as privacy, trade secret, and other confidentiality protections.

d. ''Integrity'' refers to the security of information—protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

e. ''Information'' means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that the Endowment disseminates from a web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions, where the Endowment's presentation makes it clear that what is being offered is an individual's opinion rather than fact or the Endowment's views.

f. ''Government information'' means information created, collected, processed, disseminated, or disposed of by or for the Federal Government.

g. ''Information dissemination product'' means any book, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, an Endowment disseminates to the public. This definition includes any electronic document, CD–ROM, or web page.

h. ''Dissemination'' means Endowment initiated or sponsored distribution of information to the public in all media and formats. Dissemination does not include:

(1) distribution limited to government employees or Endowment contractors or grantees; intra-or inter-agency use or sharing of government information;

(2) responses to requests for Endowment records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law; or

(3) distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes.

i. ''Influential'' when used in the phrase ''influential statistical information'' means the Endowment expects that information in the form of analytical results will likely have an important effect on the development of domestic or international government or private sector policies or will likely have important consequences for specific technologies, substances, products, or firms.

j. ''Capable of being substantially reproduced'' means that independent reanalysis of the original or supporting data using the same methods would generate similar analytical results, subject to an acceptable degree of imprecision.

Dated: June 12, 2002.

For the National Endowment for the Arts.

Hope O'Keeffe,

Acting General Counsel.

[FR Doc. 02–15247 Filed 6–17–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Meeting; Sunshine Act

TIME AND PLACE: 1:00 p.m., Wednesday, June 26, 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:

7400A Hazardous Materials Accident Report—Hazardous Material Release from Railroad Tank Car with Subsequent Fire at Riverview, Michigan, July 14, 2001.

7330A Aviation Accident Brief Report Regarding the Southwest Airlines, Inc., flight 1455, Boeing 737–300, N668SW, Accident that Occurred at Burbank-Glendale-Pasadena Airport, Burbank, California, on March 5, 2000.

7457 Aviation Accident Brief Regarding a Fatal Propeller Strike Accident, Involving US Airways flight 3340, a de Havilland Dash 8, which Occurred at Washington Reagan International Airport, Washington, DC, on August 5, 2001.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100. Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, June 21, 2002.

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: June 14, 2002.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 02–15467 Filed 6–14–02; 2:25 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* NRC Form 445, Request For Approval of Official Foreign Travel.

3. *The form number if applicable:* NRC Form 445.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Non-Federal consultants, contractors and NRC invited travelers (i.e., non-NRC employees).

6. *An estimate of the number of responses:* 200.

7. *The estimated number of annual respondents:* 200.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 200.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* Form 445, ''Request for Approval of Foreign Travel,'' is supplied by consultants, contractors, and NRC invited travelers who must travel to foreign countries in the course of conducting business for the NRC. In accordance with 48 CFR 20, ''NRC Acquisition Regulation,'' contractors traveling to foreign countries are required to complete this form. The information requested includes the name of the Office Director/Regional Administrator recommending travel, approved by the Office Director,

Regional Administrator or Chairman, as appropriate, the traveler's identifying information, purpose of travel, a listing of the trip coordinators, other NRC travelers and contractors attending the same meeting, and a proposed itinerary.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by July 18, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0193), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 12th day of June, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–15286 Filed 6–17–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 71–0122; Approval No. 0122; EA–01–164]

In the Matter of J. L. Shepherd & Associates, San Fernando, CA; Confirmatory Order Relaxing Order (Effective Immediately)

I

J. L. Shepherd & Associates (JLS&A) was the holder of Quality Assurance (QA) Program Approval for Radioactive Material Packages No. 0122 (Approval No. 0122), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 71, subpart H. QA activities authorized by Approval No. 0122 include: design, procurement, fabrication, assembly, testing, modification, maintenance, repair, and use of transportation packages subject to the provisions of 10 CFR part 71. Approval No. 0122 was originally issued January 17, 1980. Based on JLS&A's failure to comply with 10 CFR part 71, QA Program Approval No. 0122 was withdrawn by the immediately effective NRC Order, dated July 3, 2001, (66 FR 36603, July 12, 2001).

II

The NRC issued the July 3, 2001, Order (July 2001 Order) because the NRC lacked confidence that JLS&A would implement the QA Program approved by the NRC in accordance with 10 CFR part 71, subpart H, in a manner that would assure the required preparation and use of transportation packages in full conformance with the terms and conditions of an NRC Certificate of Compliance (CoC) and with 10 CFR part 71.

Subsequent to the July 2001 Order, JLS&A requested interim relief on several occasions, from the July 2001 Order based on JLS&A's proposed Near-Term Corrective Action Plan, to allow shipments in U.S. Department of Transportation specification packaging designated as 20WC. Based on a showing of good cause, the NRC issued Confirmatory Orders, dated September 19, 2001, (66 FR 49708, September 28, 2001), December 13, 2001, (66 FR 67556, December 31, 2001), March 29, 2002, (67 FR 16457, April 5, 2002), and April 26, 2002, (67 FR 22462, May 3, 2002), which relaxed the July 2001 Order by granting interim relief to allow specific shipments to identified customers in 20WC packages in accordance with JLS&A's Near-Term Corrective Action Plan, provided JLS&A satisfactorily completed certain commitments.

III

By letters dated February 26, 2002, as supplemented March 13, 18, and 25, 2002, JLS&A requested authorization to make additional shipments to customers not approved by the September 19, 2001, Order. JLS&A proposes to use the Near-Term Corrective Action Plan specified in the September 19, 2001, Confirmatory Order. JLS&A committed to: (1) Inspect the 20WC package (both shield and overpack); (2) document the inspection in a separate report; (3) perform the shipping and inspection function only by trained personnel; and (4) have the Independent Auditor verify compliance of each shipment with the foregoing commitments and certify such compliance in the monthly reports to the NRC. NRC withheld a decision on this part of the JLS&A request until after a pre-decisional enforcement conference was held with JLS&A. This Order represents NRC's final decision on JLS&A's February 26, 2002, request.

In addition, on May 23, 2002, JLS&A consented to issuance of this Confirmatory Order granting interim relief from the July 2001 Order subject to the foregoing commitments, as set forth in Section IV below, and agreed that this Confirmatory Order is to be effective upon issuance, and agreed to waive its right to a hearing on this action. Implementation of these commitments will provide assurance that sufficient resources will be applied to the QA program, and that the program will be conducted safely and in accordance with NRC requirements.

I find that JLS&A's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. The NRC staff reviewed JLS&A's relief request and JLS&A's safety performance under the above mentioned relaxation Orders, to determine whether to grant the requested relief with assurances that public health and safety are maintained. Furthermore, the NRC staff has recommended that an extension of JLS&A's request is warranted. In view of the foregoing, I have determined that the public health and safety require that JLS&A's commitments be confirmed by this Confirmatory Order. Based on the above and JLS&A's consent, this Confirmatory Order is effective immediately upon issuance.

IV

Accordingly, pursuant to Sections 62, 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Section 2.202 and 10 CFR Parts 71 and 110, *It is hereby ordered, Effective Immediately,* that the July 3, 2001, *Order is relaxed to grant* JLS&A *Interim Relief, To Complete* shipments in 20WCs to or From Any Customer, *Until May 31, 2003, In Accordance with* JLS&A's Near-Term Corrective Action Plan, *Provided:*

1. JLS&A uses the implementing procedures for the 1995 QA program plan, as revised, and the Near-Term Corrective Action Plan to complete an inspection of the 20WC packages involved in the shipments. The inspection will confirm that the packages and associated procedures are in conformance with 49 CFR 178.362, ''Specification 20WC wooden protective jacket.'' Each inspection will include, at a minimum, actual physical measurements, and visual inspections for damage, corrosion, or other potentially unacceptable conditions;

2. JLS&A documents the results of each inspection in separate reports approved by the QA Administrator and prepared in accordance with the revised 1995 QA program plan and implementing procedures. The report will include the list of attributes verified, the acceptance criteria, and the results for each attribute;

3. JLS&A uses JLS&A's staff, contractors, and sub-contractors, trained in the Near-Term Corrective Action Plan and the revised 1995 QA program plan and implementing procedures for conducting the inspections listed in the above conditions;

4. JLS&A uses an Independent Auditor, approved by the Commission, to ensure that the three conditions listed above have been completed. Additionally, the Independent Auditor shall conduct quarterly QA program audits and will provide NRC with a report by the 20th of the month following the quarter. The Independent Auditor shall verify the compliance of each shipment with the three Conditions listed above and certify to the Commission in its quarterly reports and,

5. JLS&A will stop all shipping operations if the audit conducted by the Independent Auditor identifies significant safety concerns associated with the JLS&A conduct of shipping operations. In such an event, JLS&A shall inform the NRC of the audit findings and JLS&A proposed corrective actions within 3 business days of the identification of the audit findings to JLS&A by the Independent Auditor. JLS&A will suspend all shipping operation until the safety concerns are corrected and the Independent Auditor has found the corrective action acceptable. The Independent Auditor will inform NRC of the audit findings, JLS&A corrective actions, and the results of the Independent Auditor's review of the corrective actions in its quarterly audits.

The Director, Office of Enforcement, or the Director, Office of Nuclear Material Safety and Safeguards, may in writing, relax or rescind this Confirmatory Order upon demonstration of good cause by JLS&A.

V

In accordance with 10 CFR Section 2.202, any person, other than JLS&A, adversely affected by this Confirmatory Order may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Director, Office of Nuclear Material Safety and Safeguards at the same address, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011, and to JLS&A. If such person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR Section 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Confirmatory Order without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. *A request for hearing shall not stay the immediate effectiveness of this confirmatory order.*

Dated this 6th day of June 2002.

For the Nuclear Regulatory Commission.

Frank J. Congel,

Director, Office of Enforcement.

[FR Doc. 02–15287 Filed 6–17–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of June 17, 24, July 1, 8, 15, 22, 2002.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 17, 2002

There are no meetings scheduled for the Week of June 17, 2002.

Week of June 24, 2002—Tentative

Tuesday, June 25, 2002

1:55 p.m. Affirmation Session (Public Meeting) (If needed).

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 Update Review Activities (Public Meeting) (Contacts: Noel Dudley, 301–415—1154, for license renewal program; Mohammed Shuaibi, 301–415–2859, for power update review activities).

This meeting will be webcast live at the Web address—*http://www.nrc.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— *http://www.nrc.gov.*

Week of July 15, 2002—Tentative

Thursday, July 18, 2002

1:55 p.m. Affirmation Session (Public Meeting) (If needed).

2:00 p.m. Briefing on Special Review Group Response to Differing Professional Opinion/Differiing Professional View (DPO/DPV) Review (Public Meeting) (Contact: John Craig, 301–415–1703).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of July 22, 2002—Tentative

There are no meetings scheduled for the Week of July 22, 2002.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dk2@nrc.gov.

Dated: June 13, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–15419 Filed 6–14–02; 11:57 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 78–11

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reclearance of a revised information collection. RI 78–11, Medicare Part B Certification, collects information from annuitants, their spouses, and survivor annuitants to determine their eligibility under the Retired Federal Employees Health Benefits Program for a Government contribution toward the cost of Part B of Medicare.

Approximately 100 RI 78–11 forms are completed annually. Each form requires approximately 10 minutes to complete for an annual estimated burden of 17 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX 202–418–3251, or via E-mail at *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before July 18, 2002.

ADDRESSES: Send or deliver comments to:

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415; and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing & Printing Team, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–15205 Filed 6–17–02; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25610; File No. 812–11894]

The Lincoln National Life Insurance Company, et al.

June 12, 2002.

AGENCY: Securities and Exchange Commission (the ''Commission'' or ''SEC'').

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(c) of the Investment Company Act of 1940 to permit substitution of shares of certain portfolios of variable insurance product funds for shares of portfolios of certain other variable insurance products funds.

APPLICANTS: The Lincoln National Life Insurance Company (''Lincoln Life''), Lincoln Life Variable Annuity Account N (''Lincoln Life Account N''), Lincoln Life & Annuity Company of New York (''LLNY''), Lincoln New York Separate Account N for Variable Annuities (''Lincoln New York Separate Account N'') and Touchstone Advisors, Inc. (''Touchstone'') (collectively, the ''Applicants'').

FILING DATE: The application (''Application'') was filed on December 17, 1999 and amended and restated on January 22, 2001, December 5, 2001 and June 10, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on July 3, 2002, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: For the SEC: Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. For Applicants: Brian Burke, Esquire, The Lincoln National Life Insurance Company, 1300 South Clinton Street, Fort Wayne, IN 46802. Copies to Susan S. Krawczyk, Esquire, Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, Senior Counsel, or Lorna MacLeod, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102.

Applicants' Representations

1. Lincoln Life is a stock life insurance company incorporated under the laws of the State of Indiana on June 12, 1905. LLNY is a life insurance company founded under the laws of New York on June 6, 1996. For purposes of the Act, Lincoln Life is the depositor and sponsor of the Lincoln Life Account N and LLNY is the depositor and sponsor of Lincoln New York Separate Account N, as those terms have been interpreted by the Commission with respect to variable annuity separate accounts. The Board of Directors of Lincoln Life established Lincoln Life Account N on November 3, 1997. Lincoln Life Account N is registered under the Act as a unit investment trust (File No. 811–8517). The assets of Lincoln Life Account N support certain individual variable annuity contracts (including Choice Plus), and interests in Lincoln Life Account N offered through such contracts have been registered under the Securities Act of 1933 (''1933 Act'') on Form N–4 (Reg. File Nos. 333–40937, 333–36304, and 333–36316).

2. The Board of Directors of LLNY established Lincoln New York Separate Account N on March 11, 1999. Lincoln New York Separate Account N is also registered under the Act as a unit investment trust (File No. 811–9763). The assets of Lincoln New York Separate Account N support certain Contracts and interests in Lincoln New

York Separate Account N offered through such Contracts have been registered under the 1933 Act on Form N–4 (File Nos. 333–93875 and 333–37982).

3. Touchstone, a subsidiary of Western and Southern Life Insurance Company, is an investment advisor registered under the Investment Advisors Act of 1940. As of December 31, 2001, Touchstone had $1.6 billion in assets under management.

4. The Contracts are flexible premium deferred variable annuity contracts issued by Lincoln Life (for Lincoln Life Account N) or LLNY (for Lincoln New York Separate Account N). Currently, transfers of cash value can be made in unlimited amounts each contract year among and between the sub-accounts available as investment options under the Contracts without the imposition of a transfer charge. Under the Contracts, Lincoln Life or LLNY, as applicable, reserves the right to restrict transfer privileges.

5. The Applicants propose that Lincoln Life and LLNY replace shares of the Funds in Column I (''Replaced Shares'' or ''Old Funds'') with shares in Column II (''Substitute Shares'' or ''New Funds'') outlined below:

Column I (replaced funds)	Column II (substitute funds)
AIM Variable Insurance Funds (''AIM VI'')	American Funds Insurance Series (''AFIS'')
Capital Appreciation Fund	Growth Fund—Class 2.
Alliance Variable Products Series Fund (''Alliance VPS''):	
Growth Portfolio—Class B	AFIS Growth Fund—Class 2.
Delaware Group VIP Trust (''Delaware VIP''):	
Emerging Markets Series*	
Standard Class	AFIS International Fund—Class 2.
Service Class	AFIS International Fund—Class 2.
Delaware VIP:	
Select Growth Series*	
Standard Class	AFIS Growth Fund—Class 2.
Service Class	AFIS Growth Fund—Class 2.
Delaware VIP:	
Social Awareness Series*	
Standard Class	Lincoln National Social Awareness Fund.
Service Class	Lincoln National Social Awareness Fund.
Fidelity Variable Insurance Products Fund (''Fidelity VIP''):	Scudder VIT Funds (''Scudder VIT'')
Growth Opportunities Portfolio*	
Initial Class	Scudder VIT Equity 500 Index Fund.
Service Class 2	Scudder VIT Equity 500 Index Fund.
Franklin Templeton Variable Insurance Products Trust (''Franklin VIT''):	
Mutual Shares Securities Fund—Class 2	AFIS Growth-Income Fund—Class 2.
MFS Variable Insurance Trust (''MFS''):	
Research Series*	
Initial Class	AFIS Growth Fund—Class 2.
Service Class	AFIS Growth Fund—Class 2.
Liberty Variable Investment Trust:	
Newport Tiger Fund	AFIS International Fund—Class 2.
Franklin VIT:	
Templeton Foreign Securities Fund—Class 2	AFIS International Fund—Class 2.

*Contracts issued before July 24, 2000 have standard or initial class shares. Contracts issued on or after July 24, 2000 have service class shares.

In addition, Lincoln Life also proposes to replace shares of certain other funds that were only available as investment options to certain ''ChoicePlus'' contracts issued before February 22, 2000 (the ''Closed Funds'') as follows:

Column I (replaced funds)	Column II (substitute funds)
Liberty Variable Investment Trust:	
Colonial U.S. Growth & Income Fund	AFIS Growth-Income Fund—Class 2.
Delaware VIP Devon Series	AFIS Growth-Income Fund—Class 2.
Dreyfus Variable Investment Fund (''Dreyfus''):	
Small Cap Portfolio	Scudder VIT Small Cap Index Fund.
OCC Accumulation Trust (''OCC''):	
Global Equity Portfolio	AFIS International Fund—Class 2.
OCC Managed Portfolio	AFIS Growth-Income Fund—Class 2.
Scudder Variable Series (''Scudder SVS''):	
Government Securities Portfolio	Lincoln National Bond Fund.
Scudder SVS Small Cap Growth Portfolio	Scudder VIT Small Cap Index Fund.

6. The investment objective of the AIM VI Capital Appreciation Fund is growth-of-capital. The Fund seeks to meet its objective by investing principally in common stocks of companies that have experienced above-average, long-term growth in earnings and have excellent prospects for future growth. Under normal circumstances, the Fund invests primarily in large- and medium-capitalization stocks. The Fund may hold a substantial part of its assets in cash or cash equivalents as a temporary defensive measure.

7. The investment objective of the AFIS Growth Fund is growth-of-capital. To pursue this goal, the Fund invests primarily in common stocks of larger companies that are growth oriented and appear to offer superior opportunities for growth of capital. The Fund may

also invest up to 15% of its assets in equity securities of issuers domiciled outside the U.S. and Canada and not included in the Standard & Poors 500 Composite Index.

8. The investment objectives of the AIM VI Capital Appreciation Fund and the AFIS Growth Fund are identical. While their specific investment policies and strategies differ, somewhat, both Funds are stock funds seeking investments with good long-term growth prospects. Each Fund invests primarily in large-sized growth companies, with the AIM VI Capital Appreciation Fund also investing in some mid-sized growth companies. While each of these Funds seeks to achieve its objective through somewhat different investment policies and strategies, an investor in the AIM VI Capital Appreciation Fund is attempting to achieve the same long-term goal as that sought by AFIS Growth Fund investors.

9. The investment objective of the Alliance VPS Growth Portfolio is long-term-growth-of-capital. The Fund seeks to meet its objective by investing primarily in equity securities of companies with favorable earnings outlooks and long-term growth rates expected to exceed that of the U.S. economy over time. The Portfolio emphasizes investments in large- and mid-cap companies. The Portfolio may invest up to 25% of its total assets in lower-rated fixed-income securities and convertible bonds and generally up to 20% of its total assets in foreign securities.

10. The investment objective of the AFIS Growth Fund is growth-of-capital. To pursue this goal, the Fund invests primarily in common stocks of larger companies that are growth oriented and appear to offer superior opportunities for growth of capital. The Fund may also invest up to 15% of its assets in equity securities of issuers domiciled outside the U.S. and Canada and not included in the Standard & Poors 500 Composite Index.

11. The investment objectives of the Alliance VPS Growth Portfolio and the AFIS Growth Fund are substantially similar. While their specific investment strategies differ, somewhat, both Funds are stock funds seeking investments with good long-term growth prospects. Each Fund invests primarily in large-sized growth companies, with the Alliance VPS Growth Portfolio also investing in some mid-sized growth companies. While each of these Funds seeks to achieve its objective through somewhat different investment strategies, an investor in the Alliance VPS Growth Portfolio is generally attempting to achieve the same long-term goal as that sought by the AFIS Growth Fund investors.

12. The investment objective of the Delaware VIP Emerging Markets Series is long-term capital appreciation. The Series invests primarily in equity securities from emerging foreign countries. The Series uses a dividend discount analysis to evaluate specific investment opportunities in various countries. The Series also uses a purchasing power parity approach to determine what currencies and what markets are overvalued or undervalued relative to the U.S. dollar. Together, the Series uses these analyses to determine good value oriented investments. The Series is an international fund. Under normal circumstances, at least 80% of the Series' total assets will be invested in the securities of issuers from at least three different countries (whose economics are considered to be emerging or developing) outside of the United States. The Series may invest in a broad range of equity securities including common stocks. The Series may invest up to 35% of its net assets in high yield, high risk foreign fixed income securities.

13. The investment objective of the AFIS International Fund is growth of capital (capital appreciation). The Fund invests primarily in common stocks of companies located outside the United States. The basic strategy of the Fund is to seek undervalued securities that represent good long-term investment opportunities. The Fund will invest at least 65% of its assets in equity securities (including depositary receipts of issuers domiciled outside the U.S.; however, under normal market conditions, the fund will invest substantially all of its assets in issuers domiciled outside the U.S. The Fund may invest up to 5% of its assets in debt securities rated BBB or Baa or below by S&P or Moody's.

14. The investment objectives of the Delaware VIP Emerging Markets Series and the AFIS International Fund are substantially similar. Both Funds invest in common stocks with potential for capital appreciation using value investment styles. Both Funds invest at least 65% of their assets in equity securities of issuers domiciled outside the United States, using value investment styles, with the Delaware VIP Emerging Markets Series emphasizing emerging foreign country investment. Delaware VIP Emerging Markets Series may also hold a higher percentage of high yield, high risk debt securities. While each of these Funds seeks to achieve its objective through somewhat different investment strategies, an investor in the Delaware VIP Emerging Markets Series is generally attempting to achieve the same long-term goal as that sought by the AFIS International Fund investors.

15. The investment objective of the Delaware VIP Select Growth Series is long-term capital appreciation. The Fund seeks to meet its objective by investing primarily in equity securities of companies that the investment manager believes have the potential for high earnings growth over time. The Series emphasizes investments in large- and mid-cap companies and may also invest in small-cap companies. The Series will invest at least 65% of its assets in equity securities and generally will invest 90% to 100% of its assets in equity securities. The Series may invest up to 15% of its assets in illiquid securities. The Series may invest all its assets in high quality fixed-income securities, cash or cash equivalents for defensive purposes.

16. The investment objective of the AFIS Growth Fund is growth of capital. To pursue this goal, the Fund invests primarily in common stocks of larger companies that are growth oriented and appear to offer superior opportunities for growth of capital. The Fund may also invest up to 15% of its assets in equity securities of issuers domiciled outside the U.S. and Canada and not included in the Standard & Poors 500 Composite Index.

17. The investment objectives of the Delaware VIP Select Growth Series and the AFIS Growth Fund are substantially similar. While their specific investment strategies differ, somewhat, both Funds are stock funds seeking investments with good long-term growth prospects, with Delaware VIP Select Growth Series seeking capital appreciation. Each Fund invests primarily in large-sized growth companies; the Delaware VIP Select Growth Series also invests in some mid- and small-sized growth companies. While each of these Funds seeks to achieve its objective through somewhat different investment strategies, an investor in the Delaware VIP Select Growth Series is generally attempting to achieve the same long-term goal as that sought by the AFIS Growth Fund investors.

18. The investment objective of the Delaware VIP Social Awareness Series is long-term growth of capital (capital appreciation). The Series invests primarily in common stocks of medium to large-sized domestic companies that meet certain socially responsible criteria and which are expected to grow over time. The Series' socially responsible criteria exclude companies that engage in activities relating to nuclear power; military weapons; liquor, tobacco or

gambling industries; and animal testing for personal care products and those companies that engage in activities likely to result in damage to the natural environment. The Series invests primarily in companies whose stock prices appear low relative to their underlying value or future potential. The Series uses a computer-driven selection process designed to identify stocks, and, aided by this technology, the investment manager evaluates and ranks hundreds of stocks daily using a variety of factors such as dividend yield, earnings growth and price to earnings ratios. The Series blends growth and value investment styles. Generally, 90% to 100% of the Series' assets will be invested in common stocks. The Series may hold a substantial part of its assets in cash or cash equivalents as a temporary defensive measure.

19. The investment objective of the Lincoln National Social Awareness Fund is long-term growth of capital (capital appreciation). The Fund invests primarily in common stocks of medium to large-sized domestic companies that meet certain socially responsible criteria and which are expected to grow over time. The Fund's socially responsible criteria exclude companies that engage in activities relating to nuclear power; military weapons; liquor, tobacco or gambling industries; and animal testing for personal care products and those companies that engage in activities likely to result in damage to the natural environment. The Fund invests primarily in companies whose stock prices appear low relative to their underlying value or future potential. The Fund uses a computer-driven selection process designed to identify stocks and, aided by this technology, the investment manager evaluates and ranks hundreds of stocks daily using a variety of factors such as dividend yield, earnings growth and price-to-earnings ratios. The Fund blends growth and value investment styles. Generally, 90% to 100% of the Series' assets will be invested in common stocks. The Fund may hold a substantial part of its assets in cash or cash equivalents as a temporary defensive measure.

20. The investment objectives of the Delaware VIP Social Awareness Series and the Lincoln National Social Awareness Fund are identical. Both Funds seek long-term growth of capital. Additionally, both Funds invest in common stocks of medium to large-sized domestic companies using growth and value investment styles with socially responsible investment criteria. An investor in the Delaware VIP Social Awareness Series is attempting to achieve the same long-term goal as that sought by the Lincoln National Social Awareness Fund investors.

21. The investment objective of the Fidelity VIP Growth Opportunities Portfolio is growth of capital. The Portfolio invests primarily in common stocks and securities convertible into common stocks of medium to large-sized domestic companies. The Portfolio may also invest in other types of securities, including bonds, which may be lower-quality debt securities. The Portfolio may invest in domestic and foreign issuers. The Portfolio invests in either ''growth'' stocks or ''value'' stocks or both. The Portfolio uses fundamental analysis of each issuer's financial condition and industry position and market and economic conditions to select investments.

22. The investment objective of the Scudder VIT 500 Index Fund is capital appreciation. The Fund seeks to replicate the performance of the S&P 500 Index, which emphasizes stocks of large U.S. companies. The Fund uses quantitative analysis techniques to structure the Fund to obtain a high correlation to the S&P 500 Index while remaining as fully invested as possible in all market environments. Under normal circumstances, the Fund will invest at least 80% of its assets in stocks of companies included in the S&P 500 Index and in derivative instruments, such as futures contracts and options, that provide exposure to the stocks of companies in the S&P 500 Index.

23. The investment objectives of the Fidelity VIP Growth Opportunities Portfolio and the Scudder VIT Equity 500 Index Fund are substantially similar. Both funds seek growth of capital. Additionally, both Funds invest in common stocks of large growth and value companies, with Fidelity VIP Growth Opportunities Portfolio also investing in some medium-sized growth and value companies. In short, while each of these Funds seeks to achieve its objective through somewhat different investment strategies, an investor in the Fidelity VIP Growth Opportunities Portfolio is generally attempting to achieve the same long-term goal as that sought by the Scudder VIT Equity 500 Index Fund investors.

24. The investment objective of the Franklin Mutual Shares Securities Fund is capital appreciation and secondarily income. The Fund invests primarily in medium and large capitalization companies. The Fund may also invest a significant portion of its assets in small capitalization companies. The Fund primarily invests in equity securities of companies that the manager believes are available at market prices less than their value based on certain recognized or objective criteria (intrinsic value). The Fund primarily invests in undervalued stocks (those trading at a discount to intrinsic value) and to a smaller extent, the Fund also invests in restructuring companies and distressed companies. Under normal market conditions, the Fund will invest at least 65% of its total assets in equity securities of undervalued companies. The Fund intends to invest up to approximately 20% of its assets in foreign equity and debt securities. The Fund may hold a substantial part of its assets in cash or cash equivalents as a temporary defensive measure.

25. The investment objective of the AFIS Growth-Income Fund is both capital appreciation and income. To pursue this goal, the Fund invests primarily in common stocks or other securities that demonstrate the potential for appreciation and/or dividends. The Fund may also invest up to 10% of its assets in securities of issuers domiciled outside the U.S. and not included in the Standard & Poors 500 Composite Index. The Fund may also invest up to 5% of its assets in debt securities rated BA and BB or below by S&P or Moody's. The Fund cannot invest more than 25% of the Fund's assets in the securities of issuers in the same industry. The basic strategy of the Fund is to seek undervalued securities that represent good long-term investment opportunities. For defensive purposes, the Portfolio may invest up to 10% of its assets in defensive instruments such as U.S. Government securities and money market instruments.

26. The investment objectives of the Franklin Mutual Shares Securities Fund and the AFIS Growth-Income Fund are substantially similar. While their specific investment strategies differ, somewhat, both Funds are stock funds seeking undervalued investments with good long-term growth prospects. Each Fund invests primarily in domestic large-sized value companies, with the Franklin Mutual Shares Securities Fund also investing in medium- and small sized companies and potentially more in foreign securities. While each of these Funds seeks to achieve its objective through somewhat different investment strategies, an investor in the Franklin Mutual Shares Securities Fund is generally attempting to achieve the same long-term goal as that sought by the AFIS Growth Income Fund investors.

27. The investment objective of the MFS Research Series is long-term growth of capital and future income. The Series seeks to meet its objective by investing primarily in equity securities of companies with favorable prospects

for long-term growth, attractive valuations based on current and expected earnings or cash flow, dominant or growing market share, and superior management. Under normal market conditions, the Series invests at least 80% of its total assets in common stocks and related securities. The Series emphasizes investments in large-cap companies but may also invest significant amounts of the Series' assets in companies of any size. Future income is a secondary investment objective, with growth of capital being the primary objective.

28. The investment objective of the AFIS Growth Fund is growth of capital. To pursue this goal, the Fund invests primarily in common stocks of larger companies that are growth oriented and appear to offer superior opportunities for growth of capital. The Fund may also invest up to 15% of its assets in equity securities of issuers domiciled outside the U.S. and Canada and not included in the Standard & Poors 500 Composite Index.

29. The investment objectives of MFS Research Series and AFIS Growth Fund are substantially similar. While their specific investment strategies differ, somewhat, both Funds are stock funds seeking investments with good long-term growth prospects. Each Fund invests primarily in large-sized growth companies, with the MFS Research Series also investing in mid- and small-sized companies. While each of these Funds seeks to achieve its objective through somewhat different investment strategies, an investor in the MFS Research Series is generally attempting to achieve the same long-term goal as that sought by the AFIS Growth Fund investors.

30. The investment objective of the Newport Tiger Fund is long-term capital appreciation. Under normal market conditions, the Fund invests primarily in stocks of companies located in the ten ''Tiger'' countries of Asia. The ''Tigers'' of Asia are Hong Kong, Singapore, South Korea, Taiwan, Malaysia, Thailand, India, Indonesia, The People's Republic of China and the Philippines. Stocks of quality growth companies are typically selected as investments for the Fund. For defensive purposes, the Fund may, but is not required to, invest up to 100% of its assets in cash or high quality, short-term debt securities.

31. The investment objective of the AFIS International Fund is growth of capital (capital appreciation). The Fund invests primarily in common stocks of companies located outside the United States. The basic strategy of the Fund is to seek undervalued securities that represent good long-term investment opportunities. The Fund will invest at least 65% of its assets in equity securities (including depositary receipts) of issuers domiciled outside the U.S.; however, under normal market conditions, the Fund will invest substantially all of its assets in issuers domiciled outside the U.S. The Fund may invest up to 5% of its assets in straight debt securities rated BBB or Baa or below by S&P or Moody's.

32. The investment objectives of the Newport Tiger Fund and the AFIS International Fund are substantially similar. The Newport Tiger Fund seeks long-term capital appreciation and the AFIS International Fund seeks growth of capital (capital appreciation). The Newport Tiger Fund invests principally in equity securities located in Asia, using growth-investing strategies. AFIS International Fund invests principally in equity securities located outside the United States using value and growth investing strategies. By investing in non-Asian companies (European) as well as Asian companies, the AFIS International Fund also provides additional diversification versus the Newport Tiger Fund.

While each of these Funds seeks to achieve its objective through somewhat different investment strategies, an investor in the Newport Tiger Fund is generally attempting to achieve the same long-term goal (i.e., long-term growth) as that sought by the AFIS International Fund investors.

33. The investment objective of the Templeton Foreign Securities Fund is long-term capital growth. The Fund invests its assets using ''bottom up,'' value-oriented, and long-term approaches. The Fund is an international fund. Under normal circumstances, at least 65% of the Fund's total assets will be invested in the equity securities of companies located outside the U.S., including those in emerging markets. The Fund generally invests in large to medium capitalization companies with market capitalizations greater than $2 billion. The Fund may hold a substantial part of its assets in U.S. or non-U.S. currency short-term investments, including cash or cash equivalents as a temporary defensive measure.

34. The investment objective of the AFIS International Fund is growth of capital (capital appreciation). The Fund invests primarily in common stocks of companies located outside the United States. The basic strategy of the Fund is to seek undervalued securities that represent good long-term investment opportunities. The Fund will invest at least 65% of its assets in equity securities (including depositary receipts) of issuers domiciled outside the U.S.; however, under normal market conditions, the Fund will invest substantially all of its assets in issuers domiciled outside the U.S. The Fund may invest up to 5% of its assets in debt securities rated BBB or Baa or below by S&P or Moody's.

35. The investment objectives of the Templeton Foreign Securities Fund and the AFIS International Fund are substantially similar in that the Funds seek long-term growth and capital appreciation, respectively. Both Funds invest in common stocks with potential for capital appreciation using value investment styles. Both Funds are international funds and invest at least 65% of their assets in equity securities of issuers domiciled outside the United States. While each of these funds seeks to achieve its objective through somewhat different investment strategies, an investor in the Templeton International Securities is generally attempting to achieve the same long-term goal as that sought by the AFIS International Fund investors.

36. The investment objective of the Colonial U.S. Growth & Income Fund is long-term capital growth and income. Under normal market conditions, the Fund invests primarily in large capitalization stocks. These are stocks with market capitalization of greater than $3 billion at the time of purchase. Up to 10% of the Fund's assets may be invested in debt securities. The Fund uses a value investing strategy that focuses on buying stocks cheaply when they are under valued or ''out of favor.'' The Fund buys stocks that have attractive current prices, consistent operating performance and/or favorable future growth prospects. The Fund cannot concentrate more than 25% of its total assets in any one industry.

37. The investment objective of the AFIS Growth-Income Fund is both capital appreciation and income. To pursue this goal, the Fund invests primarily in common stocks or other securities which demonstrate the potential for appreciation and/or dividends. The basic strategy of the Fund is to seek undervalued securities that represent good long-term investment opportunities. The Fund may invest up to 10% of its assets in securities of issuers domiciled outside the U.S. and not included in the Standard & Poors 500 Composite Index. The Fund may also invest up to 5% of its assets in straight debt securities rated BA and BB or below by S&P or Moody's. The Fund cannot invest more than 25% of the Fund's assets in the securities of issuers in the same industry. For

defensive purposes, the portfolio may invest up to 100% of its assets in defensive instruments such as U.S. Government securities and money market instruments.

38. The investment objectives of the Colonial U.S. Growth & Income Fund and the AFIS Growth-Income Fund are substantially similar. Both Funds are stock funds seeking undervalued investments with good long-term growth prospects. Each Fund invests primarily in large-sized value companies. While each of these Funds seeks to achieve its objective through somewhat different investment strategies, an investor in the Colonial U.S. Growth & Income Fund is generally attempting to achieve the same long-term goal as that sought by the AFIS Growth-Income Fund investors.

39. The investment objective of the Delaware VIP Devon Series is total return (current income and capital appreciation). The Series invests primarily in common stocks that the investment manager believes have the potential for above-average earnings per share growth over time combined with a high degree of earnings consistency. The Series blends traditional growth and value investment styles. Generally, 90% to 100% of the Series' assets will be invested in common stocks under normal market conditions. The Series may also invest up to 5% of net assets in convertible securities. The Series may hold a substantial part of its assets in cash or cash equivalents as a temporary defensive measure.

40. The investment objective of the AFIS Growth-Income Fund is both capital appreciation and income. To pursue this goal, the Fund invests primarily in common stocks or other securities which demonstrate the potential for appreciation and/or dividends. The Fund may also invest up to 10% of its assets in securities of issuers domiciled outside the U.S. and not included in the Standard & Poors 500 Composite Index. The Fund may also invest up to 5% of its assets in straight debt securities rated BA and BB or below by S&P or Moody's. The Fund cannot invest more than 25% of the Fund's assets in the securities of issuers in the same industry. The basic strategy of the Fund is to seek undervalued securities that represent good long-term investment opportunities. For defensive purposes, the Portfolio may invest up to 100% of its assets in defensive instruments such as U.S. Government securities and money market instruments.

41. The investment objectives of the Delaware VIP Devon Series and the AFIS Growth-Income Fund are substantially similar. While their specific investment strategies differ somewhat, both Funds are stock funds seeking undervalued investments with good long-term growth prospects. Each Fund invests primarily in domestic large-sized companies, using both growth and/or value investment styles. While each of these Funds seeks to achieve its objective through somewhat different investment strategies, an investor in the Delaware VIP Devon Series is generally attempting to achieve the same long-term goal as that sought by the AFIS Growth-Income Fund investors.

42. The investment objective of the Dreyfus Small Cap Portfolio is capital appreciation. The Portfolio focuses on small-cap companies with total market values of less than $2 billion. The Portfolio uses a blended strategy, investing in growth stocks, value stocks or stocks that exhibit characteristics of both.

43. The investment objective of the Scudder VIT Small Cap Index Fund is capital appreciation. The Fund seeks to replicate the performance of the Russell 2000 Index, which emphasizes stocks of small U.S. companies. The Fund uses quantitative analysis techniques to structure the Fund to obtain a high correlation to the Russell 2000 Index while remaining as fully invested as possible in all market environments. Under normal circumstances, the Fund will invest at least 80% of its assets in stocks of companies included in the Russell 2000 Index and in derivative instruments, such as futures contracts and options, that provide exposure to the stocks of companies in the Russell 2000 Index.

44. The investment objectives of the Dreyfus Small Cap Portfolio and the Scudder VIT Small Cap Index Fund are identical. Both Funds seek capital appreciation. Additionally, both Funds invest in small, growth-oriented companies and small, value-oriented companies. While each of these Funds seeks to achieve its objective through somewhat different investment strategies, an investor in the Dreyfus Small Cap Portfolio is generally attempting to achieve the same long-term goal as that sought by the Scudder VIT Small Cap Index Fund investors.

45. The investment objective of the OCC Global Equity Portfolio is long-term capital appreciation. The Portfolio invests primarily in equity securities on a worldwide basis and may invest up to a lesser extent in U.S. or foreign fixed-income securities. The Portfolio may invest up to 35% of its total assets in fixed-income securities that may be lower than investment grade. The Portfolio applies the principles of value investing to select securities. The Portfolio uses fundamental company analysis to select stocks that it believes are undervalued by the marketplace and have favorable cash flow, management, franchises or intrinsic value. For defensive purposes, the Portfolio may invest up to 100% of its assets in defensive investments such as U.S. Government securities and money market instruments.

46. The investment objective of the AFIS International Fund is growth of capital (capital appreciation). The Fund invests primarily in common stocks of companies located outside the United States. The basic strategy of the Fund is to seek undervalued securities that represent good long-term investment opportunities. The Fund will invest at least 65% of its assets in equity securities (including depositary receipts) of issuers domiciled outside the U.S.; however, under normal market conditions, the Fund will invest substantially all of its assets in issuers domiciled outside the U.S. The Fund may invest up to 5% of its assets in straight debt securities rated BBB or Baa or below by S&P or Moody's.

47. The investment objectives of the OCC Global Equity Portfolio and the AFIS International Fund are substantially identical. The OCC Global Equity Portfolio seeks long-term capital appreciation and the AFIS International Fund seeks growth of capital (capital appreciation). The OCC Global Equity Portfolio invests principally in equity securities located anywhere in the world using traditional value investing strategies. AFIS International Fund invests principally in equity securities located outside the United States using value and growth investing strategies. While each of these Funds seeks to achieve its objective through somewhat different investment strategies, an investor in the OCC Global Equity Portfolio is generally attempting to achieve the same long-term goal (i.e., long-term growth) as that sought by the AFIS International Fund investors.

48. The investment objective of the OCC Managed Portfolio is growth of capital over time (current income and capital appreciation). The Portfolio invests in common stocks, bonds and cash equivalents, the percentages of which will vary based on the Fund's assessment of the relative outlook for such investments. However, the Portfolio normally invests mainly in equity securities. The Portfolio may purchase securities listed on U.S. or foreign securities exchanges or traded in the U.S. or foreign over-the-counter markets. The Portfolio can invest up to

100% of its assets in debt securities, but will do so only if equity securities are not an attractive investment. The Portfolio applies the principles of value investing to select securities. The Portfolio uses fundamental company analysis to select stocks that it believes are undervalued by the marketplace and have favorable cash flow, management, franchises or intrinsic value. For defensive purposes, the portfolio may invest up to 100% of its assets in defensive investments such as U.S. Government securities and money market instruments.

49. The investment objective of the AFIS Growth-Income Fund is both capital appreciation and income. The portfolio invests primarily in common stocks or other securities, which demonstrate the potential for appreciation and/or dividends. The Fund may invest up to 10% of its assets in securities of issuers domiciled outside the U.S. and not included in the Standard & Poors 500 Composite Index. The Fund may also invest up to 5% of its assets in debt securities rated BA and BB or below by S&P or Moody's. The Fund cannot invest more than 25% of the Fund's assets in the securities of issuers in the same industry. The basic strategy of the Fund is to seek undervalued securities that represent good long-term investment opportunities. For defensive purposes, the portfolio may invest up to 100% of its assets in defensive investments such as U.S. Government securities and money market instruments.

50. The investment objectives of the OCC Managed Portfolio and the AFIS Growth-Income Fund are substantially similar. Both Funds seek growth of capital over time and income. While their specific investment strategies differ, somewhat, both Funds are stock funds seeking primarily domestic undervalued investments with good long-term growth prospects. Each Fund invests primarily in large-sized value companies. While each of these Funds seeks to achieve its objective through somewhat different investment strategies, an investor in the OCC Managed Portfolio is generally attempting to achieve the same long-term goals as those sought by the AFIS Growth Income Fund. For defensive purposes, the Portfolio may invest up to 100% of its assets in defensive investments such as U.S. Government securities and money market instruments.

51. The investment objective of the Scudder SVS Government Securities Portfolio is high current return consistent with preservation of capital. The Portfolio invests at least 65% of its total assets in U.S. Government securities and repurchase agreements of U.S. Government securities. U.S. Government-related debt instruments in which the Portfolio may invest include: direct obligations of the U.S. Treasury and securities issued or guaranteed by U.S. Government agencies or government-sponsored entities. The Portfolio may invest up to 35% of its assets in other types of fixed-income securities, including corporate debt securities with investment-grade credit ratings. The Portfolio may invest up to 10% of its assets in fixed income securities not subject to these limitations, including securities that are rated below investment grade and non-rated securities. The Portfolio generally manages its exposure to interest rate risk by adjusting its duration. For temporary defensive purposes, the Portfolio may invest up to 100% of its assets in short-term high quality debt securities, cash and cash equivalents.

52. The investment objective of the Lincoln National Bond Fund is maximum current income consistent with a prudent investment strategy. The Fund's investment strategy is to determine appropriate levels of interest rate risk and credit risk for the Fund and then hold a diverse group of debt obligations that offer the most attractive yields given the anticipated interest rate environment. The Fund will invest primarily in a combination of: high quality investment-grade corporate bonds; obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities; and mortgage-backed securities. The Fund also invests a small percentage of assets in corporate bonds rated lower than medium-grade (junk bonds) and high-quality U.S. dollar denominated foreign debt obligations. The Fund invests in significant amounts of debt obligations with medium term maturities (5–15 years) and some debt obligations with short-term maturities (0–5 years) and long-term maturities (over 15 years). The Fund may invest in money market instruments as a temporary defensive strategy.

53. The investment objectives of the Scudder SVS Government Securities Portfolio and the Lincoln National Bond Fund are substantially similar. Both Funds seek high current income and reduced risk (preservation of capital or prudent investment risk). Additionally, both Funds invest in similar fixed income securities: U.S. Government obligations, investment-grade corporate debt, and limited investment in lower grade corporate debt. While each of these Funds seeks to achieve its objective through somewhat different investment strategies, an investor in the Scudder SVS Government Securities Portfolio is generally attempting to achieve the same long-term goals as those sought by the Lincoln National Bond Fund.

54. The investment objective of the Scudder SVS Small Cap Growth Portfolio is maximum capital appreciation. The Portfolio generally invests at least 65% of its assets in small capitalization stocks similar in size to those companies comprising the Russell 2000 Index. Many of these companies would be in the early stages of their life cycle. Equity securities in which the Portfolio invests consist primarily of common stocks, but may include convertible securities, including warrants and rights. The Portfolio emphasizes growth stocks in selecting equity securities. In selecting growth stocks, the Portfolio emphasizes stock selection and fundamental research in seeking to enhance long-term performance potential. The Portfolio may also invest up to 25% of its assets in common stocks of foreign companies. For temporary defensive purposes, the Portfolio may invest up to 100% of its assets in high-quality debt securities, cash and cash equivalents.

55. The investment objective of the Scudder VIT Small Cap Index Fund is capital appreciation. The Fund seeks to replicate the performance of the Russell 2000 Index, which emphasizes stocks of small U.S. companies. The Fund uses quantitative analysis techniques to structure the Fund to obtain a high correlation to the Russell 2000 Index while remaining as fully invested as possible in all market environments. Under normal circumstances, the Fund will invest at least 80% of its assets in stocks of companies included in the Russell 2000 Index and in derivative instruments, such as futures contracts and options, that provide exposure to the stocks of companies in the Russell 2000.

56. The investment objectives of the Scudder SVS Small Cap Growth Portfolio and the Scudder VIT Small Cap Index Fund are almost identical in that both Funds seek capital appreciation. Additionally, both Funds invest in small, growth-oriented companies, with the Scudder VIT Small Cap Index Fund also investing in small, value-oriented companies. While each of these Funds seeks to achieve its objective through somewhat different investment strategies, an investor in the Scudder SVS Small Cap Growth Portfolio is generally attempting to achieve the same long-term goal as that sought by the Scudder VIT Small Cap Index Fund investors.

57. The following chart shows the average annual total returns for the Replaced Funds for the past six calendar year periods.

Replaced funds	Total return of replaced funds for the periods indicated below (percent)					
	Calendar year 2001	Calendar year 2000	Calendar year 1999	Calendar year 1998	Calendar year 1997	Calendar year 1996
AIM VI Capital Appreciation Fund (Inception date: 5/5/93)	−23.28	−10.91	44.61	19.30	13.51	17.58
Alliance VPS Growth Portfolio—Class B Shares (Inception date: 9/15/94) [1]	−23.47	−17.75	34.22	28.48	29.77	28.22
Colonial U.S. Growth & Income Fund (Inception date: 7/5/94)	−0.60	3.60	12.00	20.15	32.23	21.84
Delaware VIP Devon Series (Inception date: 5/1/97)	−9.19	−11.76	−10.13	24.05	N/A	N/A
Delaware VIP Emerging Markets Series—Standard Class (Inception date: 5/1/97)[3]	5.28	−23.60	48.28	−38.28	N/A	N/A
Delaware VIP Select Growth Series—Standard Class (Inception date: 5/3/99) [3]	−23.78	−22.46	N/A	N/A	N/A	N/A
Delaware VIP Social Awareness Series—Standard Class (Inception date: 5/1/97) [3]	−9.54	−9.37	12.91	15.45	N/A	N/A
Dreyfus Small Cap Portfolio (Inception date: 8/31/90)	−6.12	13.31	23.15	−3.44	16.75	16.6
Fidelity VIP Growth Opportunities Portfolio—Initial Class (Inception date: 1/3/95) [3]	−14.42	−17.07	4.27	24.61	29.95	18.27
Franklin Mutual Shares Securities Fund—Class 2 Shares (Inception date: 11/8/96) [2]	7.31	13.25	13.15	−0.16	17.48	N/A
MFS Research Series Initial Class (Inception date: 7/26/95) [3]	−21.25	−4.85	24.05	23.39	20.26	22.33
Newport Tiger Fund (Inception date: 5/1/95)	−18.48	−15.63	68.01	−6.43	−31.14	11.73
OCC Global Equity Portfolio (Inception date: 3/1/95)	−13.80	4.70	26.50	13.29	14.02	15.02
OCC Managed Portfolio (Inception date: 8/1/88)	−4.90	9.70	0.83	7.12	22.29	22.77
Scudder SVS Government Securities Portfolio (Inception date: 9/3/87)	7.48	10.93	0.68	7.03	8.96	2.56
Scudder SVS Small Cap Growth Portfolio (Inception date: 5/2/94)	−28.91	10.71	34.56	18.37	34.20	28.04
Templeton Foreign Securities Fund—Class 2 Shares (Inception date: 5/1/92) [2]	−15.75	−2.38	23.23	9.08	9.46	23.79

[1] Total return shown reflects the historical performance of Class A shares since the inception of the Fund, adjusted to reflect the 12b–1 fees imposed on Class B shares of the Fund.

[2] Total return shown reflects the historical performance of Class 1 shares since the inception of the Fund, adjusted to reflect the 12b–1 fees imposed on Class 2 shares of the Fund.

[3] This Replaced Fund offers different share classes under various Contracts; the performance shown for the Replaced Fund is for the class with the lowest expenses.

58. The following chart shows the average annual total returns for the Substitute Funds for the past six calendar year periods.

Substitute funds	Total return of substitute funds for the periods indicated below (percent)					
	Calendar year 2001	Calendar year 2000	Calendar year 1999	Calendar year 1998	Calendar year 1997	Calendar year 1996
AFIS Growth Fund—Class 2 Shares (Inception date: 2/8/94) [1]	−18.15	4.47	57.27	35.24	29.80	13.07
AFIS Growth-Income Fund—Class 2 Shares (Inception date: 2/8/84) [1]	2.56	7.95	11.20	18.09	25.54	18.41
AFIS International Fund—Class 2 Shares (Inception date: 5/1/90) [1]	−19.89	−22.06	75.97	20.92	8.82	17.23
Scudder VIT Equity 500 Index (Inception date: 10/1/97)	−12.18	−9.24	20.39	28.71	N/A	N/A
Scudder VIT Small Cap Index (Inception date: 8/22/97)	2.07	−3.87	20.16	−2.18	N/A	N/A
Lincoln National Bond Fund (Inception date: 12/28/81)	9.18	10.88	−3.30	9.56	9.30	2.31
Lincoln National Social Awareness Fund (Inception date: 5/2/88)	−9.50	−8.32	15.44	19.89	37.53	28.94

[1] Total return shown reflects the historical performance of Class 1 shares since the inception of the Fund, adjusted to reflect the 12b–1 fees imposed on Class 2 shares of the Fund.

59. The following chart shows the approximate size for each of the Replaced Funds as of December 31, 2001 as well as the expense ratios, management fees, and 12b–1 fee for each of the Replaced Funds for Calendar Year 2001.

Replaced funds	Net assets at December 31, 2001 (in thousands) [2]	Gross calendar year 2001 expense ratio [3] (percent)	Net calendar year 2001 expense ratio (percent)	Gross calendar year 2001 management fee (percent)	Net calendar year 2001 management fee (percent)	Calendar year 2001 12b–1 fee (percent)
AIM VI Capital Appreciation Fund (Inception date: 5/5/93)	1,163,764	0.85	0.85	0.61	0.61	N/A
Alliance VPS Growth Portfolio—Class B Shares (Inception date: 9/15/94)	320,452	1.11	1.11	0.75	0.75	0.25
Colonial U.S. Growth & Income Fund (Inception date: 7/5/94)	207,684	0.96	0.96	0.80	0.80	N/A
Delaware VIP Devon Series (Inception date: 5/1/97)	33,080	0.72	0.72	0.65	0.65	N/A
Delaware VIP Emerging Markets Series—Standard Class (Inception date: 5/1/97) [1]	12,641	1.45	1.45	1.25	1.07	N/A
Delaware VIP Select Growth Series—Standard Class (Inception date: 5/3/99) [1]	69,602	0.88	0.88	0.75	0.75	N/A
Delaware VIP Social Awareness Series—Standard Class (Inception date: 5/1/97) [1]	23,887	0.85	0.85	0.75	0.69	N/A
Dreyfus Small Cap Portfolio (Inception date: 8/31/90)	693,079	0.79	0.79	0.75	0.75	N/A
Fidelity VIP Growth Opportunities Portfolio—Initial Class (Inception date: 1/3/95) [1,4]	975,582	0.69	0.69	0.58	0.58	N/A
Franklin Mutual Shares Securities Fund—Class 2 Shares (Inception date: 11/8/96)	661,957	1.04	1.04	0.60	0.60	0.25
MFS Research Series—Initial Class (Inception date: 7/26/95) [1]	808,889	0.90	0.90	0.75	0.75	N/A
Newport Tiger Fund (Inception date: 5/1/95)	35,920	1.31	1.31	0.90	0.90	N/A
OCC Global Equity Portfolio (Inception date: 3/1/95)	31,289	1.20	1.20	0.80	0.80	N/A
OCC Managed Portfolio (Inception date: 8/1/88)	572,321	0.88	0.88	0.78	0.78	N/A
Scudder SVS Government Securities Portfolio (Inception date: 9/3/87)	305,223	0.60	0.60	0.55	0.55	N/A
Scudder SVS Small Cap Growth Portfolio (Inception date: 5/2/94)	231,850	0.68	0.68	0.65	0.65	N/A
Templeton Foreign Securities Fund—Class 2 Shares (Inception date: 5/1/92)	790,725	1.16	1.16	0.69	0.69	0.25

[1] This Replaced Fund offers different share classes under different Contracts; expenses and fees shown are for the Replaced Fund Class with the lowest fees and expenses.
[2] Reflects total assets of all classes of shares, where applicable, of the fund.
[3] Total annual expenses.
[4] Actual annual class operating expenses were lower because a portion of the brokerage commissions that the fund paid was used to reduce the fund's expenses, and/or because through arrangements with the fund's custodian, credits realized as a result of uninvested cash balances were used to reduce a portion of the fund's custodian expenses. See the accompanying prospectus for details.

60. The next chart provides the approximate size for each of the Substitute Funds as of December 31, 2001, as well as the expense ratio, management fee and 12b–1 fee for each of the Substitute Funds for Calendar Year 2001.

Substitute funds	Net assets [1] at December 31, 2001 (in thousands)	Gross calendar year 2001 expense ratio [2] (percent)	Net calendar year 2001 expense ratio [2] (percent)	Gross calendar year 2001 management fee (percent)	Net calendar year 2001 management fee (percent)	Calendar year 2001 12b–1 fee (percent)
AFIS Growth Fund—Class 2 Shares (Inception date: 2/8/94)	8,144,406	0.63	0.63	0.37	0.37	0.25
AFIS Growth—Income Fund (Inception date: 2/8/84)	8,614,715	0.60	0.60	0.33	0.33	0.25
AFIS International Fund—Class 2 Shares (Inception date: 5/1/90)	2,400,096	0.86	0.86	0.55	0.55	0.25
Scudder VIT Equity 500 Index (Inception date: 10/1/97)	465,836	0.31	0.30	0.20	0.20	N/A
Scudder VIT Small Cap Index (Inception date: 8/22/97)	151,742	0.63	0.45	0.35	0.35	N/A
Lincoln National Bond Fund (Inception date: 12/28/81)	556,894	0.53	0.53	0.45	0.45	N/A

Substitute funds	Net assets [1] at December 31, 2001 (in thousands)	Gross calendar year 2001 expense ratio [2] (percent)	Net calendar year 2001 expense ratio [2] (percent)	Gross calendar year 2001 management fee (percent)	Net calendar year 2001 management fee (percent)	Calendar year 2001 12b–1 fee (percent)
Lincoln National Social Awareness Fund (Inception date: 5/2/88)	1,274,803	0.40	0.40	0.34	0.34	N/A

[1] Reflects total assets of all classes of shares, where applicable, of the Fund.
[2] Total annual expenses.

61. By supplements to the prospectuses for the Contracts, as well as the most current prospectuses for the Contracts, all owners and prospective owners of the Contracts were notified of Lincoln Life's and LLNY's intention to take the necessary actions, including seeking the order requested by the amended and restated Application, to substitute portfolios.

62. The supplements and prospectuses stated that on the date of the proposed substitutions (after the relief requested has been obtained and all necessary systems support changes have been made), the Substitute Funds will replace the Replaced Funds as the underlying investments for such sub-accounts. In addition, the supplements informed owners and prospective owners that Lincoln Life and LLNY would not exercise any rights reserved by them under the Contracts to impose restrictions or fees on transfers from the Replaced Funds until at least thirty (30) days after the proposed substitutions. Certain supplements and prospectuses also advised existing and prospective ''ChoicePlus'' Contract owners that as of a to-be-specified date (for existing ChoicePlus Contract owners) and as of February 22, 2000 (for prospective ChoicePlus Contract owners) they would be unable to allocate net purchase payments to, or transfer cash values to, the sub-accounts of Lincoln Life Account N corresponding to each of the Closed Funds.

63. By means of an additional prospectus supplement or updated prospectus, Contract owners will be advised, at least thirty (30) days in advance of the substitutions, of the actual date of the substitutions. At least sixty (60) days before the date of the proposed substitutions, affected owners will also be provided with a prospectus for each Substitute Fund that includes complete current information concerning the Substitute Funds. Thus, any owner affected by the substitutions will have received current prospectus disclosure for each Substitute Fund at least sixty (60) days or more in advance of the proposed substitutions.

64. Lincoln Life and LLNY will redeem shares of each Replaced Fund in cash and purchase with the proceeds shares of the corresponding Substitute Fund. Redemption requests and purchase orders will be placed simultaneously so that the contract values will remain fully invested at all times. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's cash value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not incur any additional fees or charges as a result of the proposed substitutions nor will their rights or Lincoln Life's or LLNY's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting, brokerage and other fees and expenses, will be paid by Lincoln Life or LLNY. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the contract fees and charges currently imposed by Lincoln Life and LLNY and paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. Lincoln Life and LLNY do not currently impose any restrictions or fees on transfers under the Contracts, and will not exercise any right they may have under the Contracts to impose restrictions on transfers from the Replaced Funds under the Contracts for a period of at least thirty (30) days following the proposed substitutions.

65. Lincoln Life and LLNY will not increase contract charges or total separate account charges (net of any waiver or reimbursements) of the sub-accounts that invest in the Substitute Funds for those Contract owners who were Contract owners on the date of the substitution for a period of two years from the date of the substitution. If the total operating expenses for any Substitute Fund (taking into account any expense waiver or reimbursement) for any fiscal quarter for the two-year period following the date of substitution exceed on an annualized basis the net expense ratio for its corresponding Replaced Fund for the fiscal year ended December 31, 2001, Lincoln Life and LLNY will reduce (through waiver or reimbursement) the separate account expenses paid during that quarter of the sub-account that invests in such Substitute Fund for Contract owners who were Contract owners on the date of the substitution to the extent necessary to offset the amount by which the Substitute Fund's expense ratio for such period exceeds, on an annualized basis, the year 2001 expense ratio level of the Replaced Fund.

66. In addition, with regard to the substitution involving the AIM VI Capital Appreciation Fund and the AFIS Growth Fund, Lincoln and LLNY will not receive, for three years from the date of the substitution, any direct or indirect benefits from the AFIS Growth Fund, its advisers or underwriters, or from affiliates of the AFIS Growth Fund, their advisers or underwriters, in connection with assets attributable to the Contracts affected by the substitution involving the AIM VI Capital Appreciation Fund and the AFIS Growth Fund, at a higher rate than Lincoln Life and LLNY received from the AIM VI Capital Appreciation Fund, its advisers or underwriters, or from affiliates of the AIM VI Capital Appreciation Fund, their advisers or underwriters, including without limitation Rule 12b–1 fees, shareholder service or administrative or other service fees, revenue-sharing or other arrangements. Lincoln Life and LLNY each represent that the substitution involving the AIM VI Capital Appreciation Fund and the AFIS Growth Fund and its selection of the AFIS Growth Fund was not motivated by any financial consideration paid or to be paid to it or to any of its affiliates by the AFIS Growth Fund, its advisers or underwriters, or by the affiliates of the AFIS Growth Fund, their advisers or underwriters.

Applicants' Legal Analysis

1. Section 26(c) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, Section 26(c) states:

It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

2. Applicants state that the proposed substitution of shares of the Substitute Portfolios for those of the Replaced Portfolios appears to involve a substitution of securities within the meaning of Section 26(c) of the Act. Applicants therefore request an order from the Commission pursuant to Section 26(c) approving the proposed substitutions.

3. The Contracts give Lincoln Life and LLNY the right, subject to Commission approval, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a sub-account of the relevant account. The prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right. The Contracts state as follows:

Substituted Securities. Shares corresponding to a particular Fund may not always be available for purchase or [Lincoln Life] may decide that further investment in such Fund is no longer appropriate in view of the purposes of the Variable Account, or in view of legal, regulatory or federal income tax restrictions. In such event, shares of another registered open-end investment company or unit investment trust may be substituted both for Fund shares already purchased and/or as the securities to be purchased in the future, provided that these substitutions meet applicable Internal Revenue Service diversification guidelines and have been approved by the Securities and Exchange Commission and such other regulatory authorities as may be necessary. In the event of any substitution pursuant to this provision, the company may make appropriate endorsement(s) to this contract to reflect the substitution.

4. The prospectuses for the Contracts state under the caption ''Investments of the Variable Annuity Account'' the following: [Lincoln Life] [LLNY] reserve[s] the right to add, delete or substitute funds.

5. Lincoln Life and LLNY reserve this right of substitution both to protect themselves and Contract owners in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of their separate accounts and to afford these companies the opportunity to replace such shares where to do so could benefit themselves and Contract owners. For example, the Commission staff has approved substitutions made by insurance companies in response to pending mergers or liquidations of the issuer of shares held by the companies' separate accounts and has approved numerous substitutions by life insurance companies of shares of an issuer for shares of a similar issuer held by the companies' separate accounts in a variety of circumstances.

6. As mentioned above, the investment objective of the AFIS Growth-Income Fund and the Colonial U.S. Growth & Income Fund are substantially similar. Both Funds are stock funds seeking undervalued investments with good long-term growth prospects.

7. The AFIS Growth-Income Fund's and the Delaware VIP Devon Series' investment objectives are substantially similar; both seek capital appreciation with AFIS Growth-Income Fund also seeking income. Additionally, both Funds invest in common stocks using both growth and/or value investment styles.

8. The Lincoln National Bond Fund's and the Scudder SVS Government Securities Portfolio's investment objectives are substantially similar; both Funds seek high current income consistent with the preservation of capital. Additionally, both Funds invest in similar fixed-income securities: U.S. Government obligations and investment-grade corporate debt, with some limited investment in below investment-grade corporate debt.

9. The AFIS International Fund's and the OCC Global Equity Portfolio's investment objectives are substantially similar; the OCC Global Equity Portfolio seeks long-term capital appreciation and the AFIS International Fund seeks growth of capital (capital appreciation). The OCC Global Equity Portfolio invests principally in equity securities located anywhere in the world using traditional value investing strategies, while AFIS International Fund invests principally in equity securities located outside the United States using value and growth investing strategies.

10. The AFIS Growth-Income Fund's and the OCC Managed Portfolio's investment objectives are substantially similar; both Funds seek growth of capital over time (income and capital appreciation). AFIS Growth-Income Fund seeks undervalued investments with good long-term growth prospects, while the OCC Managed Portfolio uses traditional value investing in both equity and fixed-income securities.

11. The investment objectives of AIM VI Capital Appreciation and the AFIS Growth Fund are identical; both seek growth of capital. Additionally, both Funds invest in common stocks using growth investment styles.

12. The investment objectives of the Alliance VPS Growth Portfolio and the AFIS Growth Fund are substantially similar; both seek growth of capital. Additionally, both Funds invest in common stocks using growth investment styles.

13. The investment objectives of the Delaware VIP Emerging Markets Series and the AFIS International Fund are substantially similar; both Funds seek capital appreciation by investing in common stocks with potential for capital appreciation, using value investment styles. Additionally, both Funds invest principally in equity securities located outside the United States, with the Delaware VIP Emerging Markets Series emphasizing emerging foreign country investment and may also hold a higher percentage of high-yield, high-risk debt securities.

14. The investment objectives of the Delaware VIP Select Growth Series and the AFIS Growth Fund are substantially similar; both seek growth of capital, with Delaware VIP Select Growth Series' emphasis on long-term capital appreciation. Additionally, both Funds invest in common stocks using growth investment styles. Both Funds invest in large-sized companies, with Delaware VIP Select Growth Series also investing in medium- and small-sized companies.

15. The investment objectives of the Delaware VIP Social Awareness Series and the Lincoln National Social Awareness Fund are identical; both seek long-term growth of capital.

Additionally, both Funds invest in common stocks of medium to large-sized domestic companies using growth and/or value investment styles with socially responsible investment criteria.

16. The investment objectives of the Scudder VIT Small Cap Index Fund and the Dreyfus Small Cap Portfolio are identical; both seek capital appreciation. Additionally, both invest in common stocks of small-sized growth and value companies.

17. The investment objectives of the Fidelity VIP Growth Opportunities Portfolio and the Scudder VIT Equity 500 Index Fund are substantially similar; both seek growth of capital. Additionally, both Funds invest in common stocks of large-sized growth and value companies, with Fidelity VIP Growth Opportunities Portfolio also investing in some medium-sized growth and value companies.

18. The investment objectives of the Franklin Mutual Shares Securities Fund and the AFIS Growth-Income Fund are substantially similar; both seek capital

appreciation, with AFIS Growth-Income Fund also seeking income and Franklin Mutual Share Securities Fund secondarily seeking income. Additionally, both Funds invest in common stocks using value investment styles. Both Funds invest in large-sized domestic companies, with Franklin Mutual Shares Securities Fund also investing in medium- and small-sized companies and foreign companies and debt securities.

19. The investment objectives of the AFIS Growth Fund and MFS Research Series are substantially similar; both seek growth of capital, with MFS Research Series also seeking income. Additionally, both Funds invest in common stocks using growth investment styles. Both Funds invest in large-sized companies, with MFS Research Series also investing in medium- and small-sized companies.

20. The investment objectives of the Newport Tiger Fund and the AFIS International Fund are substantially similar; both invest in common stocks with potential for capital appreciation, with AFIS International Fund primarily using a value investment style and Newport Tiger Fund primarily using a growth investment style. Additionally, both Funds invest principally in equity securities located outside the United States, with the Newport Tiger Fund investing principally in Asian companies, while the AFIS International Fund provides additional diversification in non-Asian (European) companies.

21. The investment objectives of the Templeton Foreign Securities Fund and the AFIS International Fund are substantially similar; both invest in common stocks with potential for capital appreciation using value investment styles. Additionally, both Funds invest principally in equity securities located outside the United States.

22. The investment objectives of the Scudder SVS Small Cap Growth Portfolio and the Scudder VIT Small Cap Index Fund are substantially similar; both seek capital appreciation, with Scudder VIT Small Cap Index Fund utilizing a quantitative investment style and Scudder SVS Small Cap Growth Portfolio utilizing a growth investment style. Additionally, both Funds invest principally in common stocks of small-sized growth companies, with the Scudder VIT Small Cap Index Fund also investing in small-sized value companies.

23. The Applicants have concluded that, although there are differences in the objectives and policies of the Funds, their objectives and policies are sufficiently consistent to assure that following the substitutions, the achievement of the core investment goals of the affected owners in the Replaced Funds will not be frustrated.

24. The Applicants' proposed substitutions would effectively consolidate the Lincoln Life and LLNY assets of each Substitute Fund held by the accounts with those of the corresponding Replaced Fund, with a goal of each Substitute Fund having lower future expense ratios than the past expense ratios. Larger funds can have lower expenses due to two reasons. First, with a larger asset size, fixed fund expenses are spread over a larger base, lowering the expense ratio. Second, larger funds may have lower trading expenses, potentially resulting in higher total returns. In the following comparisons, ''expense ratio'' refers to both gross and net expense ratios, and ''management fee'' includes both gross and net management fees, as well as any applicable 12b–1 fees.

25. The AFIS Growth Fund has a lower expense ratio and slightly higher management fee (though total expenses are lower) and is much larger than the AIM VI Capital Appreciation Fund. The AFIS Growth Fund also has performed better for five time periods and lower for one time period compared to the AIM VI Capital Appreciation Fund.

26. The AFIS Growth Fund has a lower expense ratio and management fee and is much larger than the Alliance VPS Growth Portfolio. The AFIS Growth Fund has performed better for four time periods, the same for one time period, and lower for one time period than the Alliance VPS Growth Portfolio.

27. The AFIS International Fund has a lower expense ratio and management fee and is much larger than the Delaware VIP Emerging Markets Series. The AFIS International Fund also has performed better for three time periods and lower for one time period compared to the Delaware VIP Emerging Markets Series.

28. The AFIS Growth Fund has a lower expense ratio and management fee and is much larger than the Delaware VIP Select Growth Series. The AFIS Growth Fund also has performed better for two time periods compared to the Delaware VIP Select Growth Series.

29. The Lincoln National Social Awareness Fund has a lower expense ratio and management fee and is much larger compared to the Delaware VIP Social Awareness Series. The Lincoln National Social Awareness Fund also has performed the same for one time period and better for four time periods compared to the Delaware VIP Social Awareness Series.

30. The Scudder VIT Small Cap Index Fund has a lower expense ratio and management fee and is much smaller than the Dreyfus Small Cap Index Portfolio. The Scudder VIT Small Cap Index Fund also has better performance for two time periods and lower performance for two time periods compared to the Dreyfus Small Cap Index Fund.

31. The Scudder VIT Equity 500 Index Fund has a lower expense ratio and management fee and is smaller than the Fidelity Growth Opportunities Portfolio. The Scudder VIT Equity 500 Index Fund also has better performance for four time periods compared to the Fidelity Growth Opportunities Fund.

32. The AFIS Growth-Income Fund has a lower expense ratio and management fee and is much larger than the Franklin Mutual Shares Securities Fund. The AFIS Growth-Income Fund also has performed better for two time periods and lower for three time periods compared to the Franklin Mutual Shares Securities Fund.

33. The AFIS Growth-Income Fund has a lower expense ratio and management fee and is larger than the Colonial U.S. Growth & Income Fund. The AFIS Growth-Income Fund also has performed better for two time periods, slightly lower for two time periods and lower for two time periods compared to the Colonial U.S. Growth & Income Fund.

34. The AFIS Growth-Income Fund has a lower expense ratio and management fee and is much larger than the Delaware VIP Devon Series. In addition, as indicated previously, the AFIS Growth-Income Fund has performed better for three time periods and lower for one period compared to the Delaware VIP Devon Series.

35. The AFIS International Fund has a lower expense ratio and the same management fee and is much larger than the OCC Global Equity Portfolio. The AFIS International Fund has performed better for three time periods and lower for three time periods compared to the OCC Global Equity Portfolio.

36. The AFIS Growth-Income Fund has a lower expense ratio and management fee and is much larger than the OCC Managed Portfolio. The AFIS Growth-Income Fund has performed better for four time periods and lower for two time periods compared to the OCC Managed Portfolio.

37. The Lincoln National Bond Fund has a lower expense ratio and management fee and is larger than the Scudder SVS Government Securities Portfolio. The Lincoln National Bond Fund has performed better for three time periods and lower for three time

periods compared to the Scudder SVS Government Securities Portfolio.

38. The AFIS International Fund has a lower expense ratio and management fee and is much larger than the Templeton Foreign Securities Fund. The AFIS International Fund also has performed better for two time periods and lower for four time periods compared to the Templeton Foreign Securities Fund.

39. The AFIS Growth Fund has a lower expense ratio and management fee and is much larger than the MFS Research Series. The AFIS Growth Fund also has performed better for five time periods and lower for one time period compared to the MFS Research Series.

40. The AIFS International Fund has a lower expense ratio and management fee and is much larger than the Newport Tiger Fund. The AFIS International Fund also has performed better for four time periods and lower for two time periods compared to the Newport Tiger Fund.

41. The Scudder VIT Small Cap Index Fund has a lower expense ratio and management fee and is smaller than the Scudder SVS Small Cap Growth Portfolio. The Scudder VIT Small Cap Index Fund also has performed better for one time period and has lower performance for three time periods compared to the Scudder SVS Small Cap Growth Portfolio.

Conclusion

Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–15250 Filed 6–17–02; 8:45 am]

BILLING CODE 8010–01–P

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 meetings during the week of June 17, 2002:

Closed Meetings will be held on Tuesday, June 18, 2002, at 10 a.m., and Wednesday, June 19, 2002, at 10 a.m., and an Open Meeting will be held on Thursday, June 20, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room.

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 meetings. 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), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, June 18, 2002, will be:

Formal orders of investigation;
Institution and settlement of injunctive actions; and
Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the Closed Meeting scheduled for Wednesday, June 19, 2002, will be:

Formal orders of investigation;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature; and an
Order compelling testimony.

The subject matter of the Open Meeting scheduled for Thursday, June 20, 2002, will be:

1. The Commission will consider whether to adopt technical amendments to Rules 3a–1, 3a–2, 3a–3, 3a–5, 3a–6, 6c–6, 6e–2, 6e–3(T), 20b, and 30f–1 under the Investment Company Act of 1940 and Rules 16a–2 and 16a–3 under the Securities Exchange Act of 1934; as well as whether to adopt technical amendments to Forms 3, 4, and 5, and the references to these forms contained in the Code of Federal Regulations. The amendments will correct statutory references currently contained in the rules and the forms.

2. The Commission will consider whether to issue an interpretive release regarding the application of certain provisions of the federal securities laws to trading in security futures products. In light of the framework established by the Commodity Futures Modernization Act for the joint regulation of security futures products by the Securities and Exchange Commission and the Commodity Futures Trading Commission, the interpretive release is designed to provide guidance to securities industry and futures industry participants in applying certain provisions of the federal securities laws to trading in security futures products. This release responds to many of the interpretive issues identified by industry participants. Some questions pertain to the status and treatment of the instruments themselves under the Securities Act of 1933 and the Securities Exchange Act of 1934. Other questions pertain to the application of trading rules and other rules that apply to market intermediaries.

3. The Commission will consider whether to propose rule amendments and new rules designed to enhance the quality of financial information through improving oversight of the auditing process. The proposed rules would create the framework for a new private sector regulatory scheme for the accountants that audit or review financial statements filed with the Commission. The proposed rules also would reform oversight and improve the accountability of auditors of public companies, thereby enhancing the reliability and integrity of the financial reporting process. Under the proposed framework, a new organization, among other things, would (1) conduct reviews of accounting firms' quality controls, (2) discipline accountants for unethical or incompetent conduct, or other violations of professional standards, and (3) either set or rely on designated private sector bodies to set auditing, quality control and ethics standards.

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: June 13, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–15420 Filed 6–14–02; 11:58 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46069; File No. S7–12–01]

Notice of Application of Evangelical Christian Credit Union for Exemptive Relief Under Sections 15 and 36 of the Exchange Act and Request for Comment

June 12, 2002.

The Commission has received a request from a federally insured credit union, Evangelical Christian Credit Union (''ECCU''), for an exemption pursuant to Sections 15(a)(2) and 36(a) of the Securities Exchange Act of 1934 (''Exchange Act''). ECCU requests relief from the broker-dealer registration requirements of Section 15(a)(1) of the Exchange Act and the reporting and other requirements of the Exchange Act applicable to broker-dealers so that it might offer sweep account services to its members without registering as a broker-dealer. In order to provide an

opportunity for interested persons to comment, the Commission is publishing this notice and request for comment pursuant to Rule 0–12 under the Exchange Act. In light of informal requests for similar relief for other credit unions, the Commission is also requesting comment on whether all credit unions should be permitted to offer sweep accounts to members, including individuals, on the same terms as requested by ECCU.

Background

Section 15(a)(1) of the Exchange Act generally requires any broker or dealer who makes use of the mails or any instrumentality of interstate commerce to effect transactions in, or induce the purchase or sale of, any security to register with the Commission. Section 3(a)(4)(A) of the Exchange Act defines a ''broker'' as ''any person engaged in the business of effecting transactions in securities for the account of others.'' Sweeping deposit account balances into mutual funds constitutes ''effecting transactions in securities,'' and an entity engaging in such activity on an ongoing basis for compensation would be ''in the business of'' securities brokerage. Absent an exception or exemption, the entity would be required to register as a broker with the Commission.

Section 15(a)(2) of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt from the broker-dealer registration requirements of Section 15(a)(1) any broker or dealer or class of broker or dealer, by rule or order, as it considers consistent with the public interest and the protection of investors.[1] Similarly, but more broadly, Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[2]

ECCU's application relates to the May 11, 2001 interim final rules[3] defining certain terms used in, and granting additional exemptions from, the functional exceptions from the definitions of ''broker'' and ''dealer'' added to the Exchange Act by the Gramm-Leach-Bliley Act[4] (''GLBA''). To allow banks sufficient time to implement changes necessary to comply with the interim final rules, and to allow for careful consideration of amendments to those rules, banks and thrifts have a temporary, general exemption from broker-dealer registration.[5] Once the Commission adopts amendments to the interim final rules and the rules become effective, banks and thrifts will have a more specific set of exceptions and exemptions from registration. Banks and thrifts acting as brokers will not be considered brokers only if they meet one of eleven product or transaction-specific exceptions of the GLBA or are otherwise exempt from the definition by Commission rules.

One of functional broker exceptions is for sweeping funds into no-load money market funds, as provided in new Section 3(a)(4)(B)(v) of the Exchange Act.[6] This section provides that a bank shall not be considered to be a broker because it ''effects transactions as part of a program for the investment or reinvestment of deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.''[7] However, like the other GLBA functional exceptions for banks, the sweep account exception by its terms is available only to ''banks'' as defined in Exchange Act Section 3(a)(6). Credit unions are not banks within the meaning of this definition.[8] Therefore, without an exemption, credit unions generally would be the only depository institutions unable to sweep deposit account balances into no-load money market funds and ECCU, specifically, would not be permitted to do so absent registration as a broker-dealer.

Summary of the Application

ECCU proposes to offer its member institutions a sweep account service that would involve linking a deposit account with an omnibus account maintained with a registered broker-dealer and representing the interests of ECCU member institutions in one or more no-load money market mutual funds. Under the proposed arrangement, funds would automatically transfer back and forth between the two accounts, maintaining a specified minimum balance in the deposit account and automatically investing deposits above a specified target amount in money market mutual funds. In connection with the arrangement, ECCU proposes to engage in limited shareholder servicing and support activities, and limited promotional activities.

The funds into which ECCU proposes to sweep deposits pay the fund sponsor a management fee of 0.20% of fund net asset value annually and reimburse the fund sponsor for operating expenses estimated at approximately 0.10% of fund net asset value annually. ECCU represents that it would not receive from the fund sponsor any portion of the sponsor's management fee or operating expenses, but that in consideration of its shareholder servicing and support activities it would receive an administrative services fee not to exceed 0.25% annually of the net asset value of shares invested in the funds through ECCU's omnibus account. ECCU also proposes to charge each member institution a flat, monthly, cash management service fee for the sweep service. In addition, ECCU proposes to charge its member institutions a fee not to exceed 1.00% annually on balances maintained in the funds through their sweep accounts. ECCU represents that it would obtain from the sponsor of the funds written confirmation that the funds made available through ECCU's sweep program qualify as no-load money market funds under the definitions of ''money market fund'' and ''no-load'' in Rules 3b–17(e) and 3b–17(f) under the Exchange Act.

In its application, ECCU states that the primary purpose of its proposed arrangement is to meet the unique needs of its member institutions, over 96% of which are non-profit organizations under Section 501(c)(3) of the Internal Revenue Code, and many of which are funded by cyclical donor cash flows. ECCU further states that it would offer its proposed sweep account services only to its member institutions and not to individuals. ECCU has waived the

[1] *See* 15 U.S.C. 78*o*(a)(2).

[2] *See* 15 U.S.C. 78mm.

[3] *See* Exchange Act Release No. 44291 (May 11, 2001), 66 FR 27760 (May 18, 2001), available at <http://www.sec.gov/rules/final/34–44291.htm>.

[4] Pub. L. 106–102, 106th Cong., 1st Sess., 113 Stat. 1338 (Nov. 12, 1999).

[5] At the time it issued the interim final rules, the Commission granted banks, savings associations, and savings banks a temporary, general exemption from the definitions of the terms ''broker'' and ''dealer'' under the Exchange Act. *See* Rules 15a–7 and 15a–9 in the interim final rules release, *supra* note 1. Soon after, the Commission extended this exemption until May 12, 2002. *See* Exchange Act Release No. 44570 (July 18, 2001) (File No. S7–12–01), available at <http://www.sec.gov/rules/other/34–44570.htm>. Recently, the Commission further extended the exemption with respect to the definition of ''broker'' until May 12, 2003, and with respect to the definition of ''dealer'' until November 12, 2002. *See* Exchange Act Release No. 45897 (May 8, 2002) (File No. S7–12–01), available at <http://www.sec.gov/rules/other/34–45897.htm>.

[6] *See* 15 U.S.C. 78c(a)(4)(B)(v).

[7] *Id.*

[8] Thrifts also are not banks. However, Rule 15a–9 under the Exchange Act, which is currently applicable, generally exempts thrifts from the definition of the term ''broker'' on the same terms and conditions as banks.

request for confidential treatment included in its application, and the complete application will be available on the Commission's website (*http://www.sec.gov*) and available for a fee at the Commission's Public Reference Branch, at (202) 942–8090, 450 Fifth Street, NW., Washington, DC 20549–0102.

Request for Comment

First, the Commission invites any person to submit comments or other information that relates to the relief requested in ECCU's application, including whether the application should be granted.

Second, the Commission requests comment on whether relief such as requested by ECCU should be extended to all credit unions with deposits insured by the National Credit Union Share Insurance Fund to permit all federally insured credit unions to offer sweep account services on the same terms and conditions available to banks and thrifts. In particular, the Commission requests comment on the significance of the scope of the relief requested in ECCU's application being limited to sweep arrangements for institutions, and the significance of the non-profit status of almost all of those institutions. In this connection, the Commission would appreciate receiving information relating to whether any exemption permitting credit unions to offer sweep account services on the same terms and conditions available to banks and thrifts:

(a) Should be limited to the ECCU application until additional experience is gained with other applicants;

(b) Should be available only to some category or categories of credit unions such as, for example, federally insured credit unions;

(c) Should be available with respect to all credit union members or only some category or categories of credit union members such as, for example, individuals or non-profit organizations;

(d) Would benefit credit union members and customers of banks and thrifts by enhancing the ability of credit unions to compete with banks and thrifts by offering new services;

(e) Would raise investor protection concerns; or

(f) Would unfairly disadvantage banks, thrifts, broker-dealers, or other financial institutions in light of the ability of credit unions to offer particular products or services that other institutions might not be able to offer such as, for example, interest-bearing business checking accounts.

Third, the Commission requests comment on whether such relief would raise issues that should be considered in connection with amendments to the May 11, 2001 interim final rules implementing the functional regulation exceptions from broker-dealer registration of the GLBA. The Commission notes that when it issued the interim final rules, it requested comment on whether the exceptions and exemptions from the definitions of ''broker'' and ''dealer'' applicable to banks should be extended to other entities.[9]

Comments should be received on or before July 18, 2002. For further information, contact Catherine McGuire, Chief Counsel, Lourdes Gonzalez, Assistant Chief Counsel, or Brice Prince, Special Counsel, at (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comments should refer to File No. S7–12–01, and this file number should be included in the subject line if email is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters will be posted on the Commission's website (*http://www.sec.gov*).[10]

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–15290 Filed 6–17–02; 8:45 am]

BILLING CODE 8010–01–P

[9] *See* Exchange Act Release No. 44291 (May 11, 2001), 66 FR 27760, 27788 (May 18, 2001), available at <http://www.sec.gov/rules/final/34–44291.htm>.

[10] We do not edit personal, identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46061; File No. SR–Amex–2002–54]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Amend Amex Rules 26 and 27 To Allow Upstairs Member Firm Representatives To Participate in Meetings of the Performance Committee by Telephone, and To Reduce the Number of Specialists on the List From Which Listed Companies May Select Their Specialist

June 11, 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 June 5, 2002, the American Stock Exchange LLC (''Amex'' 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) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] 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 Amex proposes to amend Amex Rule 26 to allow upstairs member firm representatives to participate in meetings of the Performance Committee (''Committee'') by telephone, and to amend Amex Rule 27 to reduce to five the number of specialists on the list from which listed companies may select their specialist. The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange provided the Commission with notice of its intention to file the proposed rule change by letter dated May 29, 2002 from Bill Floyd-Jones, Assistant General Counsel, Amex, to Katherine England, Assistant Director, Division of Market Regulation, Commission. Rule 19b–4(f)(6) under the Act requires five business days notice, however. The Commission has decided to waive the 5-day pre-filing notice requirement. The Amex asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

Performance Committee

Rule 26. (a) The Committee on Floor Member Performance (the ''Performance Committee'') shall consist of 16 persons comprised as follows: four representatives of upstairs member firms and twelve Floor members divided as equally as possible among specialists, registered traders and brokers. The Performance Committee shall be drawn from a roster of not less than 32 persons representing upstairs member firms, specialists, registered traders and brokers. The minimum quorum for the transaction of business by the Performance Committee shall be nine persons including at least one representative of an upstairs member firm. The Performance Committee shall be chaired by a Floor Governor who may not vote except to make or break a tie. In the event that no Floor Governor is able to chair the Committee, a Senior Floor Official may chair the Committee. *Upstairs member firm representatives may attend meetings by telephone.*

The Performance Committee may delegate any or all of its responsibilities to one or more subcommittees consisting of six persons including at least one representative of an upstairs member firm, provided, however, that a subcommittee only may take the following actions: (1) Send admonitory letters, (2) refer matters to the Minor Floor Violation Disciplinary Committee for possible action pursuant to Exchange Rule 590, (3) assign performance ratings, (4) refer matters to the full Performance Committee with or without a recommendation, (5) prohibit registered option traders from effecting opening transactions for specific periods of time for failing to meet zone requirements, or (6) counsel members on how to improve their performance. The minimum quorum for the transaction of business by a subcommittee shall be four persons including one representative of an upstairs member firm. *Upstairs member firm representatives may attend meetings by telephone.*

(b) through end. No change.

Allocations Committee

Rule 27. (a) through (d). No change.

(e) If the issuer of a listed equity security chooses to participate in the allocation process, the Allocations Committee shall prepare a list of qualified specialists based on the criteria set forth in paragraph (b). In the case of an equity security, the list shall consist of *five* [six] specialists. In the case of an Exchange Traded Fund or Structured Product, the list shall consist of five specialists. The issuer may request that one or more specialists be placed on the list of eligible specialists. The Allocations Committee, however, is not obligated to honor such requests. Specialists that are subject to a preclusion on new allocations as a result of a disciplinary proceeding or action by the Performance Committee only are eligible for allocations of ''related securities'' as described in Commentary .05 of this Rule. The issuer may ask to meet with representatives of the specialists units on the list.

The issuer shall select its specialist from the list within five business days of receiving the list by providing the Exchange with a letter signed by person of Secretary rank or higher indicating the issuer's choice of specialist. In the case of an Exchange Traded Fund or Structured Product, the selection may be made by a senior officer of the sponsor or issuer who has been authorized to make such selection. If the issuer does not make its selection in a timely manner, the Allocation Committee may select the specialist as provided in paragraph (b) of this Rule.

The security shall remain with its initial specialist for at least 120 days. After that time, but during the first 12 months after listing, the issuer or sponsor may request that the security be reallocated should it become dissatisfied with its specialist. This is the case whether or not the issuer or sponsor has participated in the selection process. The issuer or sponsor is expected to furnish an explanation for the basis for its dissatisfaction, and if after counseling the issuer or sponsor and the specialist such change is still desired, the Exchange shall reallocate the security within 30 days. In any such reallocation, the Exchange shall follow the allocation procedures described in this paragraph (e) unless the issuer or sponsor requests the Allocations Committee to select the specialist without any issuer or sponsor input under the procedures described in paragraph (b) of this Rule.

(f) through (i). No change.

Commentary

.01 No change.

.02 Contacts with Unlisted Companies. Specialists and other members must submit a ''Notice of Marketing Interest'' (''NOMI'') (1) prior to contacting an unlisted company, or (2) within five business days of any unanticipated contact with an unlisted company where discussions regarding listing occur or are contemplated by the specialist or other member. The NOMI must identify the company that the specialist or other member would like to contact and is valid for no more than 12 months after Amex staff has given written approval to the request (the ''contact period''). Amex staff may decline to approve a specialist's or other member's request to contact an unlisted company where it is felt that such activity could hinder the Exchange's overall listing efforts. For example, a request to contact an unlisted company generally will not be granted where Amex staff have begun discussions with the company.

A specialist or other member may request one extension of the contact period. The request must be in writing and must describe the specific activities that the specialist or other member has undertaken which it believes will result in a favorable listing decision. If the request is deemed sufficient by Amex staff, the contact period may be extended up to an additional six months. After the expiration of the contact period and any extension, a specialist or other member may not request permission to again contact the company until six months have elapsed from the expiration of the contact period or extension as applicable. Amex staff may contact an unlisted company as to which there is an approved NOMI provided the staff notify the subject specialist or other member prior to contacting the company.

Only one NOMI can be on file for any company. A designated senior officer of the Exchange, however, may approve a second NOMI with respect to a particular company when (1) sufficient evidence warrants a determination that the second NOMI would assist the Exchange's listing program, and (2) the second NOMI includes the written consent of the first specialist or other member to the approval of the second NOMI.

Once an unlisted company has requested a listing qualification review, specialists and other members are prohibited from making any direct or indirect contact with the company for the purpose of influencing its decision in the choice of a specialist. This prohibition includes the company's investment bankers or other advisors, or any other person in a position to influence the company's management.

The Allocations Committee only will be advised of a company's preference for a particular specialist where a specialist's or member's efforts actually have been instrumental in securing the listing as evidenced by the company filing a written preference with the Exchange for the specialist within two weeks of the Exchange initiating a listing qualification review. The Allocations Committee, however, is not obligated to honor such requests.

Once the Allocations Committee has prepared the list of *five* [six] specialists to be submitted to the new listing candidate, specialists and other members may not initiate any direct or indirect communications with management, the company's investment banker or other advisors, or any person in a position to influence the company. If the company wishes to interview individual specialists, the Exchange will arrange for such interviews. The Chief Executive Officer of the Exchange or his or her designee may require a member of the Exchange staff to attend such interviews to ensure that any statements by specialists and their representatives are consistent with the Exchange's policies on communications with unlisted companies. Inappropriate communications include, but are not limited to, apparent misrepresentations as to market making capabilities or promises unrelated to the specialist's role in making a market in the issuer's stock. Specialists and their representatives also may not supply information concerning another specialist either orally or in writing, except they may refer to overall floor-wide statistics.

.03 to end. No change

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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 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 Amex 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 Committee on Floor Member Performance (''Committee'') reviews specialist performance and may take remedial action up to terminating a specialist's registration as such or reallocating securities when it identifies inadequate performance. The Committee protects both the interests of investors (by taking remedial actions to correct poor performance) and the institutional interests of the Exchange (by ensuring that the Amex is as competitive as possible with other markets).

The Exchange recently amended its rules to include representatives of upstairs member firms on the Committee. Amex staff, however, has encountered reluctance among potential upstairs member firm representatives to travel to downtown Manhattan to participate in Committee meetings. Management, therefore, is proposing to allow upstairs member firm representatives to participate by telephone at Committee meetings. This would conform Committee procedures to those of the Amex Board, the Committee on Programs and Policies, the Allocations Committee and other Amex Committees that generally allow participation by telephone.[6] Representatives of upstairs member firms that participate in meetings of the Committee by telephone would receive all materials that are provided to other Committee members so that they can fully participate in Committee activities.

Since the late 1980s, the Exchange has had two procedures for allocating equity securities: the ''issuer choice'' program under which the company selects its specialist from a list of the most qualified units prepared by the Allocations Committee, and the traditional allocation procedure under which the Allocations Committee, exercising its professional judgment, selects the specialist unit for the company.

When the Exchange first implemented the issuer choice program, there were more than 20 equity specialist units on the Amex, and the issuer received a list of seven units. In recognition of the fact that there has been a reduction in the number of equity specialist firms on the Exchange since the initiation of the issuer choice program, the Exchange is proposing to reduce to five the number of eligible specialists on the list given to newly listed companies.[7]

2. Statutory Basis

The Exchange believes that the proposal is consistent with 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 promote just and equitable principles of trade, and to protect investors and the public interest by encouraging good performance and competition among specialists.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no 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 solicited or received with respect to the proposed rule change.

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[10] and Rule 19b–4(f)(6) thereunder.[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.

The Amex has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will permit Committee members to participate by telephone immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six

[6] *See,* Article II, Section 5(d) of the Amex Constitution, ''Committee Procedures.''

[7] The Exchange notes that New York Stock Exchange ''issuer choice'' procedures call for a list of three to five specialists to be given to a newly listed company. *See,* NYSE Information Memo 00–18 (July 17, 2000).

[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)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 Amex. All submissions should refer to file number SR–Amex–2002–54 and should be submitted by July 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–15254 Filed 6–17–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46064; File No. SR–Amex–2002–49]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Allow the Amex's Chief Executive Officer To Halt, Extend or Suspend Trading in the Event of an Emergency or an Extraordinary Market Condition

June 12, 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 31, 2002, the American Stock Exchange LLC (''Amex'' 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. On June 6, 2002, the Amex amended the proposal.[3] The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rule 1, ''Hours of Business,'' to afford the Chief Executive Officer (''CEO'') of the Exchange, or his designee, in consultation with the Vice Chairman or Senior Supervisory Officer on the floor of the Exchange, greater guidance, specificity and flexibility with regard to halting, extending or suspending trading, or by closing some or all Exchange facilities, in the event of an emergency or an extraordinary market condition to meet the kinds of challenges that the Exchange may face in the future. The proposed amendment is consistent with Article XII of the Exchange Constitution (''Constitution'') and merely provides specific guidance to the CEO and others concerning the types of emergencies and special circumstances envisioned in the authority delegated to him by the Board of Governors (''Board'') pursuant to Article XII of the Constitution. The text of the proposed rule change is below. Proposed additions are in italics.

Hours of Business

Rule 1. Except as otherwise determined by the Board of Governors, the Exchange shall be open for the transaction of business on every business day, Monday through Friday. At 9:00 a.m., official announcement shall be made that the Exchange is open for trading in options on debt securities. At 9:30 a.m., official announcement shall be made that the Exchange is open for all other business purposes. The Exchange shall remain open until closed by official announcement at 4:00 p.m.; provided however, that option transactions in debt options may be effected on the Exchange only until 3:00 p.m. and all other option transactions may be effected on the Exchange until 4:02 p.m. each business day at which times no further debt or other options transactions may be made.

''After-Hours Trading'' (as defined in Rule 1300(e)(iii)) shall be conducted during such hours as the Exchange may from time to time specify.

Except as may be otherwise determined by the Board of Governors, the Chief Executive Officer of the Exchange, or his designee, shall have the power to halt, extend or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, and to determine the duration of any such halt, extension, suspension or closing, when he deems such action to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to extraordinary circumstances, such as (1) actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange; (2) a request by a governmental agency or official; or (3) a period of mourning or recognition for a person or event. In considering such action, the Chief Executive Officer of the Exchange, or his designee, shall consult with the Vice Chairman or Senior Supervising Officer on Floor, if available, and such available Floor Governors as he deems appropriate under the circumstances. The Chief Executive Officer of the Exchange, or his designee, shall notify the Board of Governors of actions taken pursuant to this Rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

Commentary—No change.

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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 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 Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 1, ''Hours of Business,'' to afford the CEO, or his designee, greater flexibility with regard to suspension of

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* undated letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Alton Harvey, Division of Market Regulation, Commission (''Amendment No. 1''). In Amendment No. 1, the Amex asked the Commission to consider the proposed rule change pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A), 17 CFR 240.19b–4(f)(6). The Amex asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

trading in the event of an emergency or extraordinary market condition to meet the kinds of challenges that the Exchange may face in the future.

Currently, Article XII of the Constitution authorizes the Board, or a person or persons designated by the Board, to take any action regarding the trading of any or all securities on the Exchange and the operation of any Exchange trading system or facility, if such action is deemed necessary or appropriate for the protection of investors, the public interest or the orderly operation of the Exchange or any Exchange system or facility. The Board has delegated these emergency powers to the CEO or his designee.

The proposed amendment to Rule 1 is consistent with Article XII of the Constitution and merely provides greater guidance, specificity and flexibility to the CEO or his designee during an emergency or extraordinary market condition.

The proposal calls for the CEO or his designee, in consultation with the Vice Chairman or Senior Supervisory Officer on the floor of the Exchange, and such available Floor Governors as he deems appropriate under the circumstances, to be authorized to respond to extraordinary circumstances, as described below, by halting, extending or suspending trading in some or all securities traded on the Exchange or by closing some or all Exchange facilities, and to determine the duration of any such halt, extension, suspension or closing. The CEO, or his designee, will be required to notify the Board of actions taken, other than for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

Under the proposed rule change, action would be taken only as a result of extraordinary circumstances and only as the CEO, or his designee, deems it necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors or otherwise in the public interest. Examples of possible extraordinary circumstances include, but are not limited to (i) actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange; (ii) a request by a governmental agency or official; and (iii) a period of mourning or recognition of a person or event.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5)[7] 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, to protect investors and the public interest. The proposed rule change is designed to strengthen the Exchange's ability to respond appropriately and in a timely fashion to future extraordinary circumstances.

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

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

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 Amex has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the 5-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the CEO or his designee to respond appropriately and in a timely fashion to an emergency or extraordinary market conditions as of the date the Amex filed the proposed rule change. The Commission notes that a similar proposed rule change by the New York Stock Exchange, Inc. (''NYSE'') was published for notice and comment, and received no comment letters.[10] Because the Amex's proposed rule change provides authority to the CEO similar to that in the NYSE's proposed rule change, the Commission designates the proposal to be effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2002–49 and should be submitted by July 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–15255 Filed 6–17–02; 8:45 am]

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[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] See Securities Exchange Act Release No. 45249 (January 7, 2002), 67 FR 1529 (January 11, 2002)(SR–NYSE–2001–55).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46062; File No. SR–CBOE–2001–66]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to Registration Filing Requirements of Associated Persons of Member Organizations

June 11, 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 December 17, 2001, the Chicago Board Options Exchange, Inc. (''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 Exchange. The Exchange filed an amendment to its proposal on April 22, 2002.[3] The Exchange filed a second amendment to its proposal on May 29, 2002.[4] The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the CBOE Fee Schedule and Rules 2.22 (Other Fees or Charges), 3.6A (Qualification and Registration of Certain Associated Persons), 9.2 (Registration of Options Principals), and 9.3 (Registration and Termination of Representatives) relating to the registration filing requirements of associated persons of member organizations. The amended rules will allow for all Exchange members and member firms, who are not members of the NASD to file a Uniform Application for Securities Industry Registration or Transfer (''Form U–4'') and a Uniform Termination Notice for Securities Industry Registration (''Form U–5'') and fingerprint information on behalf of their registered persons directly with Web CRD. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Chapter II

* * * * *

Organization and Administration

Rule 2.22—In addition to the dues and charges provided for by Rules 2.20 and 2.21 of this Chapter, the Board may, from time to time, fix and impose other fees, assessments or charges to be paid to the Exchange *or to an organization designated by the Exchange* by members or by categories of members with respect to applications, registrations, approvals, use of Exchange facilities, or other services or privileges granted.

(a) Regulatory Oversight Service Fees. Member Organizations that are subject to the SEC Net Capital Rule and for which the Exchange has been assigned as the Designated Examining Authority (''DEA'') pursuant to SEC Rule 17d–1 shall be required to pay quarterly Regulatory Oversight Service Fees. The fee shall be $0.40 per $1,000 gross revenue as reported on the member organization's quarterly FOCUS Report, provided that, upon application to the [Financial Compliance] Department *of Financial and Sales Practice Compliance,* accompanied by appropriate documentation, fees shall not be assessed against commission revenue generated from the conduct of a retail commodities future business.

(b) No changes

* * * Interpretations and Policies:

.01 No changes

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Chapter III

* * * * *

Membership

Rule 3.6A Qualification and Registration of Certain Associated Persons

(a) Financial/Operations Principal. No changes.

(b) Associated Person Statuses Under Chapter IX. No changes.

* * * Interpretations and Policies:

.01 Each person in an associated person status enumerated in paragraph (a) or (b) of this Rule shall, *electronically submit to the NASD's Web Central Registration Depository (''CRD'') System* [in a form and manner prescribed by the Exchange] (i) [submit to the Exchange] a Uniform Application for Securities Industry Registration or Transfer (Form U–4) and (ii) [promptly submit to the Exchange] any required amendments to Form U–4.

.02 No Change.

.03 No Change.

* * * * *

Chapter IX

* * * * *

Rule 9.2 Registration of Options Principals

No member organization shall be approved to transact options business with the public until those persons associated with it who are designated as Options Principals have been approved by and registered with the Exchange. Persons engaged in the management of the member organization's business pertaining to option contracts shall be designated as Options Principals. In connection with their registration, Options Principals shall *electronically* file [an application] *a Uniform Application for Securities Industry Registration or Transfer (Form U–4)* with the *NASD's Web CRD System* [Secretary of the Exchange on a form prescribed by the Exchange], shall successfully complete an examination prescribed by the Exchange for the purpose of demonstrating an adequate knowledge of the options business and of the Rules of the Exchange, and shall [sign an agreement] *further agree in the U–4 filing* to abide by the Constitution and Rules of the Exchange and the Rules of the Clearing Corporation. *Any person required to complete Form U–4 shall promptly electronically file any required amendments to Form U–4 with the NASD's Web CRD system.* Termination of employment or affiliation of any Registered Options Principal in such capacity shall be *promptly electronically* reported [promptly] to the *NASD's Web CRD System* [Secretary of the Exchange] together with a brief statement of the reason for such termination *on Form U–5.*

Rule 9.3 Registration and Termination of Representatives

(a) Registration. No member organization shall be approved to transact business with the public until those persons associated with it who are designated as Representatives have been approved by and registered with the Exchange. Persons who perform duties for the member organization which are customarily performed by sales representatives, solicitors, [customers' men] or branch office managers shall be designated as Representatives. In connection with their registration, Representatives shall *electronically* file *a Uniform Application for Securities Industry Registration or Transfer (Form U–4)* [an application] *with the NASD's Web CRD System* [on a form prescribed

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Nancy L. Nielsen, Director of Arbitration and Assistant Secretary, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (April 19, 2002) (''Amendment No. 1'').

[4] *See* Letter from Christopher R. Hill, Attorney II, Legal Department, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (May 29, 2002) (''Amendment No. 2'').

by the Exchange] *by appropriately checking the CBOE as a requested registration on the electronic U–4 filing, and* [,] shall successfully complete [a training course and] an examination for the purpose of demonstrating an adequate knowledge of the securities business, and shall *further agree in the U–4 filing* [sign an agreement] to abide by the Constitution and Rules of the Exchange and the Rules of the Clearing Corporation.[; provided, however, that Representatives of member organizations that are members of another national securities exchange or association which has standards of approval acceptable to the Exchange may be deemed to be approved by and registered with such other exchange or association. Member organizations whose Representatives are deemed registered pursuant to the last clause of the preceding sentence shall inform their Representatives of their obligation to adhere to the Constitution and Rules of the Exchange and the Rules of the Clearing Corporation.] *Any person required to complete Form U–4 shall promptly electronically file any required amendments to Form U–4 with the NASD's Web CRD system.*

(b) Termination—Filing of U–5's. The discharge or termination of employment of any registered person, together with the reasons therefore, shall be *electronically* reported *to the NASD's Web CRD System* by a member organization immediately following the date of termination, but in no event later than thirty (30) days following termination,[to the Exchange's Department of Financial and Sale Practice Compliance] on a Uniform Termination Notice for Securities Industry Registration (Form U–5). A copy of said termination notice shall be provided concurrently to the person whose association has been terminated.

(c) Termination—Filing of amended U–5's. The member organization shall *electronically* report to the *NASD's Web CRD system* [Exchange], by means of an amendment to the Form U–5 filed pursuant to paragraph (b) above, in the event that the member organization learns of facts or circumstances causing any information set forth in the notice to become inaccurate or incomplete. Such amendment shall be [filed with the Exchange's Department of Financial and Sales Practice Compliance and] provided concurrently to the person whose association has been terminated no later than thirty (30) days after the member organization learns of the facts or circumstances giving rise to the amendment.

* * * [Interpretations and Policies:

.01 The application prescribed by the Exchange pursuant to paragraph (a) of this Rule is the Uniform Application for Securities Industry Registration or Transfer (Form U–4). Any person required to complete Form U–4 shall promptly file any required amendments to Form U–4.

.02 Any filing or submission requirement under this Rule shall be deemed to be satisfied if such filing or submission is made with the North American Securities Administrators Association/National Association of Securities Dealers, Inc. Central Registration Depository (CRD) within the applicable time period set forth in this Rule.]

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Fee Schedule

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12. REGULATORY FEES:

(A) No change.
(B) No change.
(C) No change.
(D) Web CRD℠ Fees.

The following fees will be collected and retained by NASD via the Web CRD℠ registration system for the registration of associated persons of Exchange members/member organizations who are not also NASD members:

(i) GENERAL REGISTRATION FEES:
*$85.00 NASD Non-Member Processing Fee**
*$95.00 NASD Disclosure Processing Fee** (U–4, U–5, & amendments)*
$30.00 NASD Annual System Processing Fee assessed only during Renewals

**For all Initial, Transfer, Relicense, Dual registration Form U–4 filings. This fee will also be generated upon refiling to Web CRD℠ of CBOE—only registered individuals.*

***For all registration, transfer, or termination filings with new or amended disclosure information or that require certification as well as any amendment to disclosure information.*

(ii) FINGERPRINT PROCESSING FEES:
$32.00 per card Initial Submission
$10.00 per card Second Submission w/ initial Fingerprint Card attached
$32.00 per card Second Submission w/o initial Fingerprint Card attached
$32.00 per card Third Submission

Please also note that effective within 60 days after the CBOE receives approval from the SEC and reaches agreement with the NASD, the CBOE REGISTRATION FEES listed in Section 12(A) above will be collected by NASD from associated persons of CBOE member firms that are not members of NASD. (Advance notification of the specific date will be provided to CBOE member firms.) Please note further that these fees are already being collected by the NASD on behalf of the CBOE from CBOE members that are also members of the NASD.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule is to allow for associated persons of CBOE member firms that are not members of the National Association of Securities Dealers, Inc. (''NASD'') to register their qualification status electronically via the NASD's Web CRD. Currently, the Exchange requires those associated persons of member organizations that are members of the CBOE, but not NASD members, to manually register for a qualification status by filing a hard copy Form U–4. In addition, a hard copy Form U–5 must be filed with the Exchange within 30 days of the registered person's termination or within 30 days after the member organization learns of any facts or circumstances that would give rise to an amendment. The CBOE has established an arrangement with NASD Regulation (''NASDR'') to allow CBOE members that are not NASD members to register associated persons electronically with the NASDR in place of the CBOE as a CRD participant. The CBOE believes that this revision to the current registration process will benefit those persons seeking and/or maintaining registrations with the CBOE in that hard copy filings will no longer need to be sent to the Exchange. Further, all registration and disclosure data will be consolidated into one database, Web CRD, thus allowing members and member organizations access to the member's associated persons' records.

Further, processing associated persons of these non-NASD member firms in Web CRD will make information about them more readily available to regulators and allow for closer monitoring of these firms. In addition, this agreement will establish a method to allow registered persons to be notified and satisfy the Continuing Education Regulatory Requirement pursuant to CBOE Rule 9.3A.

This proposed rule change implements the following fees to be imposed upon non-NASD Exchange members and member organizations, which members will be instructed to pay directly to NASDR through the Web CRD system at the time the Exchange member/member organization effects a registration transaction through Web CRD:

(a) *Non-Member Processing Fee*—This $85.00 fee will be assessed upon establishing a record on the Web CRD system for any associated person of a non-NASD CBOE member. Accordingly, this fee will be assessed for all initial, transfer, relicense and dual registration Form U–4 filings. In addition, this fee will be assessed when NASDR establishes a record for any associated person of a non-member who already maintains a registration capacity at the CBOE (*e.g.,* NASDR will assess this fee when establishing CRD records for individuals who previously were manually tracked at the CBOE).

(b) *Disclosure Processing Fee*—This $95.00 fee will be assessed for any initial, transfer, relicense and dual registration Form U–4 or Form U–5 filing that contains new or amended disclosure information (*i.e.,* an initial affirmative response to current Question 23 on the Form U–4 or a change to any information previously reported in response to Question 23).

(c) *Annual System Processing Fee*—This $30.00 fee will be assessed during the yearly renewals cycle and covers system processing costs for the year.

(d) *Fingerprint Processing Fees*—These fees, as specified in the CBOE Fee Schedule, will be assessed for processing fingerprint cards submitted with Form U–4 filings.[5]

Once the transition to the Web CRD is completed all Exchange members and member organizations that are not members of the NASD will be subject to these Web CRD fees, which will be set forth on the Exchange Fee Schedule. In addition, all registered persons will continue to be assessed CBOE registration fees as outlined in CBOE Rule 2.22(b)—*Other Fees or Charges, (Registration Fees).*

Rule 9.3(a) is being edited to eliminate obsolete language (*i.e.,* ''customers' men''), and to clarify the requirements for registration by associated persons of members of other national securities exchanges, by deleting language that will no longer be applicable when such associated persons effect their registration via Web CRD (''provided, however, that Representatives of member organizations * * * of the Clearing Corporation.'') This deleted language is obsolete and has had no practical effect since the CBOE began coordinating the registration of its members with the CRD. The former Interpretations .01 and .02 to Rule 9.3 are being eliminated, as the appropriate portions have been incorporated into Rule 9.3 itself.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2001–66 and should be submitted by July 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–15253 Filed 6–17–02; 8:45 am]

BILLING CODE 8010–01–P

[5] By letter to Elizabeth King, Associate Director, Division of Market Regulation, SEC, from Joanne Moffic-Silver, General Counsel and Corporate Secretary, Legal Department, CBOE, dated March 1, 2002, the Exchange submitted an amended Fingerprint Plan pursuant to SEC Rule 17f–2(c), 17 CFR 240.17f–2(c), under the Act.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46066; File No. SR–NASD–2002–73]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq Testing Facility Fees, and To Add the Ability To Test Computer-to-Computer Interface, Application Programming Interface, and Market Data Vendor Feeds Over Dedicated Circuits

June 12, 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 June 4,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to apply the fee schedule described in a proposed amendment to NASD Rule 7050 to non-member subscribers. Nasdaq filed a separate proposal to amend NASD Rule 7050 to add subparagraph (d), which establishes a new category of monthly fees and one-time installation fees applicable to member subscribers that choose to test their communication interfaces and/or market data vendor feeds with Nasdaq's central processing facilities over a dedicated circuit or circuits, as opposed to a dial-up connection.[3] Now, with this proposed rule change, Nasdaq proposes to apply the same schedule of fees in SR–NASD–2002–72 to non-member subscribers that use a dedicated circuit or circuits to test their communication interfaces and/or market data vendor feeds with Nasdaq's central processing facilities. The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.

7050. Other Services

(a) No change.
(b) No change.
(c) No change.
(d) [Testing Services] *Nasdaq Testing Facility (NTF)—*

(1) Subscribers that conduct tests of their computer-to-computer *interface* (CTCI), [or digital interface (DIS/CHPS)] *NWII application programming interface (API), or market data vendor feeds* [with the central processing facilities] *through the Nasdaq Testing Facility (NTF)* of The Nasdaq Stock Market, Inc. (N[SMI]*asdaq*) shall pay the following charges:

$250/hour—For CTCI/[DIS/CHIPS]*NWII API* testing between 9:00 a.m. and 5:00 p.m. E.T. on business days;
$333/hour—For *CTCI/NWII API* testing at all other times on business days, or on weekends and holidays.

(2) The foregoing *hourly* fees shall not apply to *market data vendor feed testing, or* testing occasioned by:

(A) new or enhanced services and/or software provided by N[SMI]*asdaq* or

(B) modifications to software and/or services initiated by N[SMI]*asdaq* in response to a contingency.

(3) Subscribers that conduct CTCI/API or market data vendor feed tests using a dedicated circuit shall pay a monthly fee, in addition to any applicable hourly fee described in section (d)(1) above, in accordance with the following schedule:

Service	Description	Proposed price
NTF Market Data	*Test Market Data Vendor Feeds over a 56kb dedicated circuit*	*$1,100/circuit/month.*
NTF NWII API	*NWII API service to an onsite test SDP over a 56kb dedicated circuit*	*$1,100/circuit/month.*
NTF CTCI	*CTCI service over a 56kb dedicated circuit*	*$1,100/circuit/month.*
NTF Test Suite	NWII API service and CTCI service over two 56kb circuits (128 kb)	*$1,800/2 circuits/month.*
NTF Circuit Installation	*Installation of any service option including SDP configuration*	*$700/circuit/installation.*

(4) New NTF subscribers that sign a one-year agreement for dedicated testing service shall be eligible to receive 90-calendar days free dedicated testing service.

(5) ''New NTF subscribers'' are subscribers that

(A) have never had dedicated testing service; or

(B) have not had dedicated testing service within the last 6 calendar months.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to establish a new category of monthly fees and one-time installation fees applicable to non-member subscribers that choose to test their communication interfaces and/or market data vendor feeds with Nasdaq's central processing facilities over a dedicated circuit or circuits, as opposed to a dial-up connection. These fees would be charged in addition to the hourly fees currently charged. Many subscribers have requested that Nasdaq expand its Nasdaq Testing Facility (''NTF'') services to include dedicated lines and the ability to test market data vendor feeds in addition to computer-to-computer interface (''CTCI'') and application programming interfaces (''API''). Nasdaq filed this proposal in response to those requests.

Members and non-member subscribers currently access the NTF over a dial-up connection to test CTCI and API with their systems. Subscribers are currently unable to test market data vendor feeds through the NTF. Nasdaq proposes to provide new services for the NTF that will allow subscribers to test CTCI and API as well as market data vendor feeds over a dedicated circuit or circuits. These new services will allow firms that have trading environments integrating CTCI, API, and Nasdaq vendor data to test their systems more completely. Member firms typically perform application testing to ensure that the software the firm has developed to interface with Nasdaq systems works properly. Software may be developed to take advantage of a Nasdaq market enhancement or to enhance a firm's internal systems or software applications. The subscriber determines the scope, purpose, and longevity of the test. Nasdaq participates in the testing process by providing a test environment that closely approximates the production environment for the systems the subscriber wishes to test as well as test scripts used for testing relevant functionality.

The proposed schedule of monthly and installation fees has been calculated to cover the actual costs of installing

[3] *See* Securities Exchange Act Release No. 46065 (June 12, 2002)(SR–NASD–2002–72).

and providing a dedicated circuit or circuits for testing of subscriber communications interfaces with Nasdaq's central processing facilities. Such costs include an installation cost and a monthly infrastructure cost that Nasdaq incurs through its network service provider, in addition to costs for hardware, licensing and labor required to maintain the test network. New subscribers, described in the proposed rule as ''New NTF Subscribers,'' will receive 90 calendar-days free service if they choose to sign a one-year agreement for service. New NTF Subscribers are subscribers who have never purchased dedicated test circuits or who have not had dedicated test service in over six months. Subscribers that do not wish to sign a one-year agreement may purchase services on a month-to-month basis. As has always been the case, no testing fee would be assessed in circumstances where major systems/software changes instituted by Nasdaq have prompted the subscriber's test. In addition, Nasdaq will not charge subscribers hourly fees for market data vendor feed testing.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[4] in general, and with Section 15A(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among member and non-member subscribers using the NTF. The fees will be charged to member and non-member subscribers that choose to test their communication systems interfaces with Nasdaq's central processing facilities over a dedicated circuit or circuits. Member and non-member subscribers will be charged the same fees for the same service. Nasdaq believes the fees are reasonable in that they have been calculated to recover Nasdaq's actual costs of installation and maintenance of the dedicated circuit(s).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[4] 15 U.S.C. 78o–3.

[5] 15 U.S.C. 78o–3(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission is considering granting accelerated approval of this proposed rule change after the expiration of a 15-day comment period.

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 NASD. All submissions should refer to file number SR–NASD–2002–73 and should be submitted by July 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–15251 Filed 6–17–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46065; File No. SR–NASD–2002–72]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq Testing Facility Fees, and to Add the Ability to Test Computer-to-Computer Interface, Application Programming Interface, and Market Data Vendor Feeds Over Dedicated Circuits

June 12, 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 June 4, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7050(d) to add a schedule of monthly fees and a one-time installation fee to be charged to subscribers that use a dedicated circuit or circuits to test their communications interfaces and/or market data vendor feeds with Nasdaq's central data processing facilities.[6] The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

7050. Other Services

(a) No change.

(b) No change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq provided the Commission with written notice of its intention to file the proposed rule change on May 17, 2002. Nasdaq has asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] Nasdaq has filed a similar proposal to extend the same fees and abilities to non-members. *See* Securities Exchange Act Release No. 46066 (June 12, 2002) (SR–NASD–2002–73).

(c) No change.

(d) [Testing Services] *Nasdaq Testing Facility (NTF)*

(1) Subscribers that conduct tests of their computer-to-computer *interface* $(CTCI)_2$ [or digital interface (DIS/CHPS)] *NWII application programming interface (API), or market data vendor feeds* [with the central processing facilities] *through the Nasdaq Testing Facility (NTF)* of The Nasdaq Stock Market, Inc. (N[SMI]*asdaq*) shall pay the following charges:

$250/hour—For CTCI/[DIS/CHIPS]*NWII API* testing between 9 a.m. and 5 p.m. E.T. on business days;

$333/hour—For *CTCI/NWII API* testing at all other times on business days, or on weekends and holidays.

(2) The foregoing *hourly* fees shall not apply to *market data vendor feed testing, or* testing occasioned by:

(A) new or enhanced services and/or software provided by N[SMI]*asdaq* or

(B) modifications to software and/or services initiated by N[SMI]*asdaq* in response to a contingency.

(3) *Subscribers that conduct CTCI/API or market data vendor feed tests using a dedicated circuit shall pay a monthly fee, in addition to any applicable hourly fee described in section (d)(1) above, in accordance with the following schedule:*

Service	Description	Proposed price
NTF Market Data	Test Market Data Vendor over a 56kb dedicated circuit	$1,100/circuit/month.
NTF NWII API	NWII API service to an onsite test SDP over a 56kb dedicated circuit	$1,100/circuit/month.
NTF CTCI	CTCI service over a 56kb dedicated circuit	$1,100/circuit/month.
NTF Test Suite	NWII API service and CTCI service over two 56kb circuits (128 kb)	$1,800/2 circuits/month.
NTF Circuit Installation	Installation of any service option including SDP configuration	$700/circuit/installation.

(4) *New NTF subscribers that sign a one-year agreement for dedicated testing service shall be eligible to receive 90-calendar days free dedicated testing service.*

(5) ''New NTF subscribers'' are subscribers that:

(A) have never had dedicated testing service; or

(B) have not had dedicated testing service within the last 6 calendar months.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to establish a new category of monthly fees and one-time installation fees applicable to member subscribers that choose to test their communication interfaces with Nasdaq systems over a dedicated circuit or circuits, as opposed to a dial-up connection. These fees would be charged in addition to the hourly fees currently charged. Many subscribers have requested that Nasdaq expand its Nasdaq Testing Facility (NTF) services to include dedicated lines and the ability to test market data vendor feeds in addition to computer-to-computer interface (CTCI) and application programming interface (API). Nasdaq filed this proposal in response to those requests.

Members and nonmember subscribers currently access the NTF over a dial-up connection to test CTCI and API with their systems. Subscribers are currently unable to test market data vendor feeds through the NTF. Nasdaq is proposing to provide new services for the NTF that will allow subscribers to test CTCI and API as well as market data vendor feeds over a dedicated circuit or circuits. These new services will allow firms that have trading environments integrating CTCI, API and Nasdaq vendor data to test their systems more completely. Member firms typically perform application testing to ensure that the software the firm has developed to interface with Nasdaq systems works properly. Software may be developed to take advantage of a Nasdaq market enhancement or to enhance a firm's internal systems or software applications. The subscriber determines the scope, purpose, and longevity of the test. Nasdaq participates in the testing process by providing a test environment that closely approximates the production environment for the systems the subscriber wishes to test as well as test scripts used for testing relevant functionality. The proposed schedule of monthly and installation fees has been calculated to cover the actual costs of installing and providing a dedicated circuit or circuits for testing of subscriber communications interfaces with Nasdaq's central processing facilities.[7] Such costs include an installation cost and monthly infrastructure cost that Nasdaq incurs through its network service provider, in addition to costs for hardware, licensing and labor required to maintain the test network. New subscribers, described in the proposed rule as ''New NTF Subscribers,'' will receive 90 calendar-days free service if they choose to sign a one-year agreement for service. New NTF Subscribers are subscribers who have never purchased dedicated test circuits or who have not had dedicated test service in over six months. Subscribers that do not wish to sign a one-year agreement may purchase services on a month-to-month basis. As has always been the case, no hourly testing fee would be assessed in circumstances where major systems/software changes instituted by Nasdaq have prompted the subscriber's test. In addition, Nasdaq will not charge subscribers hourly fees for market data vendor feed testing.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with the provisions of Section 15A of the Act,[8] in general, and with Section 15A(b)(5) of the Act,[9] in particular, in that the fees will be charged to member subscribers that

[7] The fees are not designed to generate revenue. Telephone conversation between Teri Nelson Jacoby, Assistant General Counsel, Nasdaq, and Joseph Morra, Special Counsel, Division of Market Regulation, Commission, June 3, 2002. The Commission expects that Nasdaq will monitor the fees carefully, and should Nasdaq collect more than is necessary to cover the actual costs of installing and providing a dedicated circuit or circuits for testing of subscriber communications interfaces with Nasdaq's central processing facilities, the Commission expects Nasdaq to adjust the fees.

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(5).

choose to test their communication systems interfaces with Nasdaq's central processing facilities over a dedicated circuit or circuits. Nasdaq believes the fees are reasonable in that they have been calculated to recover Nasdaq's actual costs of installation and maintenance of the dedicated circuit(s).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[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.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow subscribers to test CTCI and API as well as market data vendor feeds over a dedicated circuit or circuits immediately, thereby allowing firms that have trading environments integrating CTCI, API and Nasdaq vendor data to test their systems more completely. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies 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 Association. All submissions should refer to file number SR–NASD–2002–72 and should be submitted by July 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–15252 Filed 6–17–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46060; File No. SR–NASD–2002–64]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Amending the Restated Certificate of Incorporation of the Nasdaq Stock Market, Inc.

June 11, 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 16, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to 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 NASD. Nasdaq filed Amendment No. 1 to the proposed rule change on June 3, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On December 5, 2002, the Commission approved SR–NASD–2001–34,[4] a proposed rule change to amend the Certificate, but the amendment reflected in SR–NASD–2001–34 was not implemented at that time [5] because under the General Corporation Law of the State of Delaware (''Delaware Law''), the amendment must be approved by Nasdaq's stockholders.[6] The proposed rule change contained in this filing—SR–NASD–2002–64—amends the language approved by the Commission in SR–NASD–2001–34. Nasdaq submitted the text approved in SR–NASD–2001–34, as amended by SR–NASD–2002–64, to its stockholders for approval at the 2002 annual meeting of stockholders (the ''Annual Meeting''), which was held on May 22, 2002, and the stockholders voted to approve the changes.[7]

The text of the proposed rule change is set forth below, which includes the amendments approved by the Commission under SR–NASD–2001–34. New text is italicized; deleted text is bracketed.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 31, 2002 (''Amendment No. 1''). In Amendment No. 1, Nasdaq clarified the proposal to reflect that the proposed amendments to the Nasdaq Restated Certificate of Incorporation (the ''Certificate'') were approved by its shareholders at the May 22, 2002 annual meeting. Because the Form 19b–4 submitted on May 16, 2002 was not complete, the proposed rule change was not considered filed. The proposed rule change became effective on June 3, 2002, the date on which Amendment No. 1 was filed with the Commission.

[4] *See* Securities Exchange Act Release No. 45135 (December 5, 2001), 66 FR 64327 (December 12, 2001).

[5] *See* Amendment No. 1, *supra* note 3.

[6] Del. Code Ann. Tit. 8, § 242(b)(2001).

[7] *See* Amendment No. 1, *supra* note 3.

RESTATED CERTIFICATE OF INCORPORATION OF THE NASDAQ STOCK MARKET, INC.

* * * * *

ARTICLE FOURTH

A. No change.

B. No change.

C. 1. No change.

2. Notwithstanding any other provision of this Restated Certificate of Incorporation, but subject to subparagraph 6 of this paragraph C. of this Article Fourth, in no event shall (i) any record owner of any outstanding Common Stock *or Preferred Stock* which is beneficially owned, directly or indirectly, as of any record date for the determination of stockholders and/or holders of Notes entitled to vote on any matter, or (ii) any holder of any Notes which are beneficially owned, directly or indirectly, as of any record date for the determination of stockholders and/or holders of Notes entitled to vote on any matter, by a person (other than an Exempt Person) who beneficially owns shares of Common Stock, *Preferred Stock* and/or Notes (''Excess Shares and/or Notes'') in excess of five percent (5%) of the then-outstanding shares of [Common Stock] *stock generally entitled to vote as of the record date in respect of such matter,* be entitled or permitted to vote any Excess Shares and/or Notes *on such matter.* For all purposes hereof, any calculation of the number of shares of [Common Stock] *stock* outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding shares of [Common Stock] *stock* of which any person is the beneficial owner, shall be made in accordance with the last sentence of Rule 13d–3(d)(1)(i) of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), as in effect on the date of filing this Restated Certificate of Incorporation.

3. (a)–(c) No change.

(d) ''Exempt Person'' shall mean Nasdaq or any Subsidiary of Nasdaq, in each case including, without limitation, in its fiduciary capacity, or any employee benefit plan of Nasdaq or of any Subsidiary of Nasdaq, or any entity or trustee holding [Common Stock] *stock* for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of Nasdaq or of any Subsidiary of Nasdaq.

(e) No change.

(f) The Board shall have the power to construe and apply the provisions of this paragraph C. of this Article Fourth and to make all determinations necessary or desirable to implement such provisions, including, but not limited to, matters with respect to (1) the number of shares of [Common Stock] *stock* beneficially owned by any person, (2) the number of Notes beneficially owned by any person, (3) whether a person is an Affiliate of another, (4) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in the definition of beneficial ownership, (5) the application of any other definition or operative provision hereof to the given facts, or (6) any other matter relating to the applicability or effect of this paragraph C. of this Article Fourth.

4.–5. No change.

6. Notwithstanding anything herein to the contrary, subparagraph 2 of this paragraph C. of this Article Fourth shall not be applicable to any Excess Shares and/or Notes beneficially owned by (a) the NASD or its Affiliates until such time as the NASD beneficially owns five percent (5%) or less of the outstanding shares of [Common Stock] *stock* and/or Notes *entitled to vote on the election of a majority of directors at such time,* (b) any other person as may be approved for such exemption by the Board prior to the time such person beneficially owns more than five percent (5%) of the outstanding shares of [Common Stock] *stock* and/or Notes *entitled to vote on the election of a majority of directors at such time* or (c) Hellman & Friedman Capital Partners IV, L.P., H&F International Partners IV–A, L.P., [Hellman & Friedman] *H&F* International Partners IV–B, L.P., and H&F Executive Fund, L.P. if the Board has approved an exemption for any other person pursuant to Section 6(b) of this paragraph C. of this Article Fourth (other than an exemption granted in connection with the establishment of a strategic alliance with another exchange or similar market). The Board, however, may not approve an exemption under Section 6(b): (i) for a registered broker or dealer or an Affiliate thereof (provided that, for these purposes, an Affiliate shall not be deemed to include an entity that either owns ten percent or less of the equity of a broker or dealer, or the broker or dealer accounts for one percent or less of the gross revenues received by the consolidated entity); or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act. The Board may approve an exemption for any other stockholder or holder of Notes if the Board determines that granting such exemption would (A) not reasonably be expected to diminish the quality of, or public confidence in, The Nasdaq Stock Market or the other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (B) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

7. 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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 3, 2001, Nasdaq sold $240 million of 4.0% Convertible Subordinated Notes due 2006 (the ''Notes'') to Hellman & Friedman Capital Partners IV, L.P., H&F International Partners IV–A, L.P., H&F International Partners IV–B, L.P., and H&F Executive Fund IV, L.P. (collectively, the ''HFCP IV LPs''). The Notes are convertible at any time during a five-year period into shares of Nasdaq common stock at a conversion price of $20 per share; thus, the Notes purchased by the HFCP IV LPs would be convertible into 12,000,000 shares of Nasdaq common stock. On December 5, 2001, the Commission approved a proposed rule change—SR–NASD–2001–34—to amend the Certificate to afford the holders of the Notes the right to vote with Nasdaq stockholders.[8]

The Certificate amendment approved by the Commission in SR–NASD–2001–34 did not take effect at the time of approval by the Commission, because approval by Nasdaq stockholders at the Annual Meeting was also required. Under the Certificate as in effect prior

[8] *See supra* note 4.

to stockholder approval, a person who beneficially owns shares of common stock in excess of 5% of the outstanding shares of common stock may not vote the excess shares.[9] The 5% voting limitation does not apply, however to (1) the NASD or its affiliates until such time as the NASD beneficially owns 5% or less of Nasdaq's outstanding common stock, or (2) any other person that the Nasdaq Board of Directors (the ''Nasdaq Board'') may exempt prior to the time that such person beneficially owns more than 5% of Nasdaq's outstanding common stock. Under the Certificate, the Nasdaq Board must make certain findings with respect to the effect on an exemption on enumerated aspects of Nasdaq's regulatory obligations. Moreover, the Nasdaq Board may not approve an exemption for a registered broker or dealer or an affiliate thereof or a person that is subject to a statutory disqualification under Section 3(a)(39) of the Act.[10]

Under the amendments approved by the Commission in SR–NASD–2001–34, the Notes will be granted direct voting rights, but the 5% voting limitation will be made applicable to the Notes as well as the common stock. However, the HFCP IV LPs will be exempted from the 5% voting limitation if the Nasdaq Board approves an exemption from the 5% voting limitation for any other person (other than an exemption granted in connection with the establishment of a strategic alliance with another exchange or similar market).

Thus, prior to the Annual Meeting, holders of the Notes did not have the right to vote with Nasdaq stockholders. They could become stockholders (with voting rights) by paying the conversion price and converting the Notes into common stock, but would, like other stockholders, be subject to the 5% voting limitation. As a result of stockholder approval of the proposed rule change approved by the Commission in SR–NASD–2001–34, the Notes have been given direct voting rights, but are also subject to the 5% voting limitation.[11]

On March 8, 2002, Nasdaq completed a two-stage repurchase of Nasdaq common stock owned by the NASD, in exchange for cash, 1,338,402 shares of Series A Cumulative Preferred Stock (''Series A Preferred''), and one share of Series B Preferred Stock (''Series B Preferred''). Under Delaware Law and the Certificate, the Nasdaq Board may issue up to 30,000,000 shares of preferred stock in one or more series, and may establish the designation, powers, preferences and rights of each series of preferred stock at the time of issuance, without stockholder approval. However, under Delaware Law, the instrument by which the Nasdaq Board establishes the designation, powers, preferences, and rights of a series of preferred stock has the effect of an amendment to the Certificate.[12] Accordingly, on March 8, 2002, Nasdaq filed with the Commission an immediately effective proposed rule change, comprised of Certificates of Designation, Preferences and Rights for the Series A Preferred and Series B Preferred.[13]

The Series B Preferred is a single share designed to ensure that the NASD maintains voting control over Nasdaq until Nasdaq is registered as a national securities exchange. Accordingly, it confers upon the NASD the right to cast a number of votes that, together with other votes entitled to be cast by the NASD, constitute a majority of the total votes entitled to be cast at a particular time. The Series B Preferred is not transferable and must be redeemed if Nasdaq is registered as a national securities exchange. The Series A Preferred pays a dividend and is generally non-voting, although it conveys limited voting rights in the event of the failure to pay a timely dividend.

Under the Certificate as amended under SR–NASD–2001–34, voting preferred stock is not subject to the 5% voting limitation that applies to common stock and that also applies to the Notes following stockholder approval of voting rights for the Notes.[14] This gap in the coverage of the 5% limitation does not pose regulatory issues with respect to the NASD's ownership of the Series A Preferred and Series B Preferred because the NASD is *required* to control Nasdaq until Nasdaq is registered as a national securities exchange, a fact that is reflected in the automatic exemption from the 5% limitation that the NASD receives under the Certificate (until such time as its voting interest falls below 5%). Nevertheless, Nasdaq believes that the Certificate should be amended to provide that voting preferred stock is subject to the same limitations as common stock (and the Notes). Under this proposed rule change,[15] Nasdaq would be unable to issue any form of *voting* securities that are not subject to the 5% limitation, unless the Nasdaq Board either (i) adopted an amendment to its Certificate that was filed with, and if necessary, approved by, the Commission and approved by Nasdaq's stockholders, or (ii) waived the application of the 5% limitation to a particular security holder prior to the time that such person acquired a 5% interest.[16]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Sections 15A(b)(2)[17] and 15A(b)(6) of the Act,[18] which require, among other things, that the NASD be so organized and have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance with the provisions of the Act, and that the Association's rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the changes proposed to its Certificate are consistent with the intent of the 5% voting limitation that is currently contained in the Certificate, which serves the public interest by ensuring that certain individuals and entities cannot gain undue influence over the operations of Nasdaq. In its orders relating to the Certificate, the Commission found that the 5% voting limitation and other limitations affecting the control of Nasdaq fulfill the obligations arising under the Act.[19]

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received written comments.

[9] *See* Amendment No. 1, *supra* note 3.

[10] 15 U.S.C. 78c(a)(39).

[11] *See* Amendment No. 1, *supra* note 3.

[12] Del. Code Ann. Tit. 8, § 151(g)(2001).

[13] *See* Securities Exchange Act Release No. 45638 (March 25, 2002), 67 FR 15268 (March 29, 2002).

[14] *See* Amendment No. 1, *supra* note 3.

[15] *Id.*

[16] As noted above, the Nasdaq Board must make certain findings before granting a waiver and may not grant a waiver to a broker or dealer or an affiliate thereof or a person that is subject to a statutory disqualification.

[17] 15 U.S.C. 78o–3(b)(2).

[18] 15 U.S.C. 78o–3(b)(6).

[19] *See supra* note 4; Securities Exchange Act Release No. 42983 (June 26, 2000), 65 FR 41116 (July 3, 2000).

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 [20] and subparagraph (f)(3) of Rule 19b–4 [21] thereunder because it is concerned solely with the administration of the self-regulatory organization. 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.[22]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR–NASD–2002–64 and should be submitted by July 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–15256 Filed 6–17–02; 8:45 am]

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[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(3).

[22] Because the Form 19b–4 submitted on May 16, 2002 was not complete, the proposed rule change was not considered filed. The proposed rule change became effective on June 3, 2002, the date on which Amendment No. 1 was filed with the Commission. In addition, for purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on June 3, 2003, the date Nasdaq filed Amendment No. 1.

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46067; File No. SR–NASD–2002–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to Rule 3010(b)(2) and IM–8310–2

June 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On May 31, 2002, NASD filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend NASD Rule 3010(b)(2), also known as the ''Taping Rule,'' and NASD IM–8310–2. The proposed amendments to the Taping Rule generally would: (1) Permit firms that become subject to the Taping Rule a one time opportunity to adjust their staffing levels to fall below the prescribed threshold levels and thus avoid application of the Rule; (2) revise the criteria by which firms become subject to the Taping Rule by not including certain short-term employees of disciplined firms into the calculations of the Taping Rule threshold levels; (3) expand the compliance deadline from 30 to 60 days for firms subject to the Taping Rule to install taping systems; (4) clarify the staff's authority to grant exemptions from the Rule pursuant to the Rule 9600 Series only in exceptional cases; and (5) extend the taping requirements from two years to three years to eliminate conflicting time periods in the Taping Rule. In addition, NASD Regulation proposes amendments to NASD IM–8310–2 to permit, upon request, public disclosure of whether a particular firm is subject to the Taping Rule. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

3010. Supervision

(a) No Change.
(b) Written Procedures.
(1) No Change.
(2) Tape recording of conversations.

(A) [(i)] Each member that either is notified by NASD Regulation or otherwise has actual knowledge that it meets one of the criteria in paragraph (b)(2)*(H)*[(viii)] relating to the employment history of its registered persons at a Disciplined Firm as defined in paragraph (b)(2)*(J)*[(x)] shall establish, maintain, and enforce special written procedures for supervising the telemarketing activities of all of its registered persons.

(B)[(ii)] The member must establish *and implement* the supervisory procedures required by this paragraph within [30] *60* days of receiving notice from NASD Regulation or obtaining actual knowledge that it is subject to the provisions of this paragraph.

A member that meets one of the criteria in paragraph (b)(2)(H) for the first time may reduce its staffing levels to fall below the threshold levels within 30 days after receiving notice from NASD Regulation pursuant to the provisions of paragraph (b)(2)(A) or obtaining actual knowledge that it is subject to the provisions of the paragraph, provided the firm promptly notifies the Department of Member Regulation, NASD Regulation, in writing of its becoming subject to the Rule. Once the member has reduced its staffing levels to fall below the threshold levels, it shall not rehire a person terminated to accomplish the staff reduction for a period of 180 days. On or prior to reducing staffing levels pursuant to this paragraph, a member must provide the Department of Member Regulation, NASD Regulation with written notice, identifying the terminated person(s).

(C) [(iii)] The procedures required by this paragraph shall include tape-recording all telephone conversations between the member's registered persons and both existing and potential customers.

(D) [(iv)] The member shall establish reasonable procedures for reviewing the tape recordings made pursuant to the requirements of this paragraph to ensure compliance with applicable securities laws and regulations and applicable rules of [this] *the* Association. The procedures must be appropriate for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Grace Yeh, Assistant General Counsel, NASD Regulation, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated May 31, 2002.

member's business, size, structure, and customers.

(E) [(v)] All tape recordings made pursuant to the requirements of this paragraph shall be retained for a period of not less than three years from the date the tape was created, the first two years in an easily accessible place. Each member shall catalog the retained tapes by registered person and date.

(F) [(vi)] Such procedures shall be maintained for a period of [two] *three* years from the date that the member establishes *and implements* the procedures required by the provisions of this paragraph.

(G) [(vii)] By the 30th day of the month following the end of each calendar quarter, each member firm subject to the requirements of this paragraph shall submit to the Association a report on the member's supervision of the telemarketing activities of its registered persons.

(H) [(viii)] The following members shall be required to adopt special supervisory procedures over the telemarketing activities of their registered persons:

• A firm with at least five but fewer than ten registered persons, where 40% or more of its registered persons have been [employed by] *associated* with one or more Disciplined Firms *in a registered capacity* within the last three years;

• A firm with at least ten but fewer than twenty registered persons, where four or more of its registered persons have been [employed by] *associated* with one or more Disciplined Firms *in a registered capacity* within the last three years;

• A firm with at least twenty registered persons, where 20% or more of its registered persons have been [employed by] *associated with* one or more Disciplined Firms *in a registered capacity* within the last three years.

For purposes of the calculations required in subparagraph (H), firms should not include registered persons who:

(1) have been registered for an aggregate total of 90 days or less with one or more Disciplined Firms within the past three years; and

(2) do not have a disciplinary history.

(I)[(ix)] For purposes of this Rule, the term ''registered person'' means any person registered with the Association as a representative, principal, or assistant representative pursuant to the Rule 1020, 1030, 1040, and 1110 Series or pursuant to Municipal Securities Rulemaking Board (''MSRB'') Rule G–3.

(J)[(x)] For purposes of this Rule, the term ''disciplined firm'' means a member that, in connection with sales practices involving the offer, purchase, or sale of any security, has been expelled from membership or participation in any securities industry self-regulatory organization or is subject to an order of the Securities and Exchange Commission revoking its registration as a broker/dealer.

(K)[(xi)] *For purposes of this Rule, the term ''disciplinary history'' means a finding of a violation by a registered person in the past five years by the Securities and Exchange Commission, a self-regulatory organization, or a foreign financial regulatory authority of one or more of the provisions (or comparable foreign provision) listed in IM–1011–1 or rules or regulations thereunder.*

(L) Pursuant to the Rule 9600 Series, the Association may *in exceptional circumstances, taking into consideration all relevant factors,* exempt any member unconditionally or on specified terms and conditions from the requirements of this paragraph [upon satisfactory showing that the member's supervisory procedures ensure compliance with applicable securities laws and regulations and applicable rules of the Association].

* * * * *

IM–8310–2. Release of Disciplinary [Information] *and Other Information Through the Public Disclosure Program*

(a) In response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, the Association shall release certain information contained in the Central Registration Depository regarding a current or former member, an associated person, or a person who was associated with a member within the preceding two years, through the Public Disclosure Program. Such information shall include:

(1) the person's employment history and other business experience required to be reported on Form U–4;

(2) currently approved registrations for the member or associated person;

(3) the main office, legal status, and type of business engaged in by the member; and

(4) an event or proceeding—

(A) required to be reported under Item 23 on Form U–4;

(B) required to be reported under Item 11 on Form BD; or

(C) reported on Form U–6.

The Association also shall make available through the Public Disclosure Program certain arbitration decisions against a member involving a securities or commodities dispute with a public customer. *In addition, the Association shall make available in response to telephonic inquiries via the Public Disclosure Program's toll-free telephone listing whether a particular member is subject to the provisions of Rule 3010(b)(2).* The Association shall not release through the Public Disclosure Program social security numbers, residential history information, or physical description information, or information that the Association is otherwise prohibited from releasing under Federal law.

(b) through (l) 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, NASD Regulation 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. NASD Regulation 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 Taping Rule, which was adopted in 1998, is designed to ensure that members with a large number of registered persons from firms that have been expelled from membership or have had their registration revoked (''Disciplined Firms'') have proper supervisory procedures over telemarketing activities to prevent fraudulent and improper sales practices or other customer harm. Under the Rule, firms that hire a significant number of employees from Disciplined Firms must establish, maintain, and enforce special written procedures for supervising the telemarketing activities of all their registered persons. In addition, such firms are required to install taping systems to record all telephone conversations between all of their registered persons and both existing and potential customers, review the tape recordings, and file quarterly reports with NASD Regulation.

Based upon staff's experience with the Taping Rule and input from the National Adjudicatory Council and NASD Regulation Committees, the staff proposes several amendments to the Rule. Generally, the proposed amendments are intended to refine the

application of the Taping Rule and to provide additional flexibility to assist member firms in meeting their compliance obligations under the Rule. Firms that, as of the effective date of the proposed rule change, have a pending exemption request from the Taping Rule requirements (or related appeal before the National Adjudicatory Council (''NAC'')), or for which the time period in which to seek an applicable exemption (or related appeal to the NAC) has not yet expired, may elect to comply with the Taping Rule as amended by the proposed rule change in lieu of complying with the current requirements under the Rule.

a. *Establishment of a 30-Day Staff Adjustment Period.* NASD Regulation is concerned that some firms may inadvertently or unintentionally become subject to the Taping Rule due, for example, to sudden turnover among registered persons or other events beyond the firm's control. As a means to address these types of occurrences, NASD Regulation is proposing to provide all firms that trigger application of the Taping Rule (for the first time) a one-time opportunity to obtain relief from the Taping Rule requirements by adjusting their staffing levels.

In particular, NASD Regulation proposes to permit firms, within 30 days after receiving the notice that they are subject to the Taping Rule or obtaining actual knowledge that they are subject to the Rule (and have promptly notified the Department of Member Regulation that they are subject to the Rule), to reduce their staffing levels to fall below the threshold levels contained in paragraph (b)(2)(viii) of the Taping Rule and thus avoid application of the Taping Rule. Under the proposed rule change, firms would not be permitted to hire additional registered representatives to fall below the stated thresholds but rather would be required to reduce their number of registered representatives from Disciplined Firms. Once a firm has made the reductions, the firm would not be permitted to rehire the terminated individuals for a period of at least 180 days. Under the proposed rule change, firms may elect, but are not required, to make reductions to their staffing levels. If a firm chooses not to make the adjustment, then it will be required to comply with the Taping Rule requirements.

A firm would be permitted to adjust its staffing levels only when it becomes subject to the Taping Rule for the first time. If the firm re-triggers the Taping Rule at any point in the future, then the firm automatically would become subject to its provisions. While a new entity resulting from a restructuring (by a merger, acquisition, or otherwise) would be allowed to make a staff adjustment to avoid application of the Taping Rule even if one of the participating members in the restructuring had previously adjusted its staff level pursuant to the proposed rule change, this would not be the case for an entity that was restructured in an effort to avoid compliance with the Rule.

b. *Revision of the Criteria by Which Firms Become Subject to the Taping Rule.* NASD Regulation is proposing to revise the criteria for determining whether a firm is subject to the Taping Rule by excluding from the firm's calculations registered persons who were associated with a Disciplined Firm for only a short period of time. Specifically, in calculating whether firms exceed the Taping Rule thresholds set forth in the Rule, registered persons who were registered with one or more Disciplined Firms for 90 days or less within the last three years and who have no relevant disciplinary history, while still included in the total number of registered persons at a firm, may be excluded from the number of registered persons at the firm from Disciplined Firms.

NASD Regulation believes that the proposed rule change is consistent with the intent of the Taping Rule. The proposed rule change recognizes that persons registered with Disciplined Firms for a short period of time (*i.e.*, an aggregate total of 90 days or less) are far less likely to have acquired the ''bad habits'' from the Disciplined Firms that the Taping Rule seeks to redress. Moreover, it is anticipated that these individuals will receive proper training and supervision at their new firms. To provide greater assurance that these short-term employees have not acquired the ''bad habits'' of concern or do not otherwise raise the concerns that the Rule is designed to address, the proposed rule change also requires that such short-term employees have no disciplinary history by a finding of a violation of the provisions set forth in NASD IM–1011–1.

In addition, the proposed rule change would clarify that the calculation of registered representatives from Disciplined Firms includes independent contractors previously registered with a Disciplined Firm. NASD Regulation proposes to make a technical amendment to the current rule language by substituting ''associated with one or more Disciplined Firms in a registered capacity'' for ''employed by one or more Disciplined Firms'' in subparagraph (b)(2)(viii) of the Taping Rule.

c. *Expansion Of The Compliance Deadline From 30 To 60 Days.* Under the current Taping Rule, firms are obligated to implement the special supervisory procedures, including the installation of taping systems within 30 days of receiving notice from the NASD (or obtaining actual knowledge) that they are subject to the Taping Rule. Most of the firms that have become subject to the Taping Rule have requested extensions of time to complete the installation of a taping system. In light of these requests and the staff's understanding that firms typically require greater than 30 days to install an appropriate taping system, the proposed rule change would extend the time for firms to install the taping system from 30 days to 60 days. Based on the staff's experience, 60 days should provide adequate time for firms to install the taping systems and would alleviate the need for firms to request extensions of time.

d. *Clarification Of The Exemptive Relief Authority.* Currently, paragraph (b)(2)(xi) of the Taping Rule permits member firms that become subject to the Taping Rule to apply for exemptive relief under the Rule 9600 Series ''upon satisfactory showing that the member's supervisory procedures ensure compliance with applicable securities laws and regulations and applicable rules of the Association.'' In reviewing exemptive requests, NASD Regulation generally has required a firm to establish that it has alternative procedures to assure supervision at a level functionally equivalent to a taping system. Notwithstanding this high standard, the staff has received a substantial number of applications for exemptive relief, all but one of which have been denied.

Based on its experience administering exemptive requests, the staff believes that the exemption provisions should be explicitly drafted to be available in ''exceptional circumstances'' only. The staff believes that clearly articulating a high standard for an exemption will save firms and the staff the time and expense involved in the vast majority of unmeritorious exemption applications the staff has reviewed to date. Further, the additional flexibility created by the proposed rule change, particularly the one-time ability to reduce staffing levels to avoid application of the Rule, should significantly reduce any need to seek an exemption.

e. *Increase Duration Of The Special Supervisory Requirements.* The proposed rule change would extend the time period for which firms must maintain taping systems from two years to three years. NASD Regulation

believes that this proposed change will reduce confusion concerning the application of the Taping Rule. Currently, the Taping Rule requires firms to install the taping systems for a period of two years; however, the Taping Rule also requires firms to look back three years for the employment history of their registered representatives to calculate the threshold levels under paragraph (b)(2)(viii) of the Taping Rule. Equalizing these two time periods to three years would eliminate the confusion and would alleviate any problems in the calculations for the Taping Rule thresholds.

In addition, the proposed rule change would clarify that the period for which firms are required to maintain the taping system begins from the date that the member establishes its special supervisory procedures and implements the taping system. The proposed rule change further would clarify in paragraph (b)(2)(ii) of the Taping Rule that a firm is required to both establish and implement the taping system within the time period set forth in such paragraph.

f. *Publication Of The Identity Of Firms Subject To The Taping Rule.* Since the inception of the Taping Rule, the staff has received requests from regulators, consumer groups, and investor representatives, to make the identity of firms subject to the Taping Rule publicly available. After careful consideration of the issue, NASD Regulation believes that public disclosure of the identity of firms subject to the Taping Rule in circumstances where information is being sought regarding a particular firm is appropriate and consistent with the objectives of the Taping Rule. As a result, the proposed rule change would enable investors and the general public to ascertain, upon request, whether an identified firm is subject to the Taping Rule.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[4] which require, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change provides firms with more flexibility to comply with the Rule while still requiring firms that hire a significant number of registered persons from Disciplined Firms to adopt enhanced supervisory procedures to protect investors and prevent fraudulent and manipulative sales practices.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NASD Notice to Members 01–38 (June 2001). Sixteen comments were received in response to the Notice.[5] Copies of the comment letters have been provided to the Commission. Of the 16 comment letters received, 12 were in favor of the proposed rule change and 4 were opposed.

Establishment of a 30-day Staff Adjustment Period: Generally, the commenters supported the proposal to allow member firms that become subject to the Taping Rule for the first time to make a downward adjustment of staff in order to fall below the triggering thresholds of the Rule. Nine of the commenters supported the proposal.[6] Three commenters opposed the proposal.[7] While supporting the proposal, Bartholomew believed that the staff adjustment mechanism should be based upon a facts and circumstances determination and should not be automatic. One commenter who did not support the proposal, Schonberg, noted that the representatives from Disciplined Firms, even employed for a short period of time, have the capability to teach ''bad habits'' to the new firm's representatives.

Short-term Employee Proposal: With respect to the proposals to exclude short-term employees from a member firm's Taping Rule calculations and to define ''short-term'' as a period of not more than 90 days, a slight majority of the commenters supported the proposals. Nine commenters supported the proposal regarding a firm's calculations.[8] Seven commenters opposed this proposal.[9]

A smaller group of commenters responded to the proposed definition of short-term period. Seven commenters supported the proposed definition.[10] Six commenters opposed the proposed definition.[11] First Liberty and Banks believed the time period should be 30 days while Nova believed that the period should be no longer than 14 days. Joseph Stevens did not support the proposed definition due to the fact that firms may hire consultants for periods of longer than 90 days.

Expansion of the Compliance Deadline: In general, the commenters supported the proposals to extend the compliance deadline for firms that become subject to the Taping Rule requirements and to set the deadline for compliance at 60 days. Ten commenters supported extending the compliance deadline and, with the exception of Clark Dodge, J.P. Turner and Schwartz, the same commenters stated that the 60-day period was a sufficient period of time for compliance.[12] Five commenters did not support the extension of the current 30-day time period.[13] Clark Dodge, J.P. Turner, Schwartz, and Rushmore believed that the time period should be longer with Schwartz and Rushmore stating that a 90-day period would be more appropriate and Clark Dodge suggesting 75 days. Basmagy would maintain the current 30-day

[4] 15 U.S.C. 78–3(b)(6).

[5] Comments letters were received from: Anonymous; Robert Banks (''Banks''); Patricia Bartholomew, Thinkequity Partners (''Bartholomew''); Clark Dodge & Company, Inc. (''Clark Dodge''); E.E. Powell & Company Inc. (''E.E. Powell''); First Liberty Investment Group (''First Liberty''); Jerard Basmagy, First Montauk Securities Corp. (''Basmagy''); Joseph Stevens & Co., Inc. (''Joseph Stevens''); J.P. Turner & Company, LLC (''J.P. Turner''); Alexander Nova (''Nova''); Personalized Investments, Inc. (''Personalized Investments''); Rushmore Securities Corp. (''Rushmore''); Matthew Schonberg, Aegis Capital Corp. (''Schonberg''), Seth Schwartz, Washington Square Securities, Inc. (''Schwartz''); Maryanne Sylenko (''Sylenko''); and James Welch, Morgan Stanley (Fort Worth, Texas) (''Welch'').

[6] *See, e.g.,* Comment letters from First Liberty, Joseph Stevens, Basmagy, Personalized Investments, Bartholomew, E.E. Powell, Schwartz, Sylenko, and Clark Dodge.

[7] *See, e.g.,* Comment letters from Schonberg, Welch, and Anonymous.

[8] *See, e.g.,* Comment letters from Banks, J.P. Turner, Joseph Stevens, Basmagy, Personalized Investments, E.E. Powell, Sylenko, Clark Dodge, and Rushmore. (Although Banks responded negatively to Question 2, he did express a willingness to support the proposal if the 90-day short-term period was done in the aggregate. The proposal would calculate the 90-day period in the aggregate.)

[9] *See, e.g.,* Comment letters from First Liberty, Schonberg, Nova, Bartholomew, Schwartz, Welch, and Anonymous.

[10] *See, e.g.,* Comment letters from Personalized Investments, Basmagy, E.E. Powell, Welch, Anonymous, Clark Dodge, and Rushmore.

[11] *See, e.g.,* Comment letters from First Liberty, Schonberg, Banks, Nova, Joseph Stevens, and Schwartz.

[12] *See, e.g.,* Comment letters from First Liberty, J.P. Turner, Joseph Stevens, Personalized Investments, E.E. Powell, Schwartz, Welch, Anonymous, Clark Dodge, and Rushmore.

[13] *See, e.g.,* Comment letters from Schonberg, Banks, Nova, Basmagy, and Bartholomew.

period; however, he would permit firms to petition the Association for extensions of time.

Narrowing of the Exemptive Relief Authority: No comments were received on the proposal expressly to limit the exemptive provisions of the Taping Rule to ''exceptional circumstances.''

Increase Duration of the Special Supervisory Requirements: No comments were received on the proposal to extend the taping requirements and special supervisory procedures from two years to three years to correspond to the look-back provisions of the Rule.

Publication of the Identity of Firms Subject to the Taping Rule: The Notice to Members sets forth two proposals for publication of the identity of firms subject to the Taping Rule. One proposal would allow an individual to receive the information that a firm is subject to the Taping Rule in response to a request for information of the firm through the CRD Public Disclosure Program (''PDP''). The other proposal would publish a list of firms subject to the Taping Rule on the NASD Regulation web site similar to the list of Disciplined Firms that is currently on the Web site. The majority of commenters supported both proposals.

Thirteen commenters supported the disclosure of the information through the PDP [14] and of these commenters only Clark Dodge did not support posting the information on the Web site. Banks and Basmagy supported the proposals since they would permit an investor to make an informed decision prior to establishing a relationship with a member firm. J.P. Turner and Rushmore did not support either proposal noting that publication of the information would be unfair to the firms. Nova supported both proposals, however he recommended that the information be put in one location in the PDP so that the public could more easily obtain the information.

NASD Regulation believes that the list of taping firms should not be made publicly available on the NASD Regulation Web site because the requirement to tape is not a disciplinary sanction, but rather a heightened supervisory requirement not typically disclosed to the public. However, because knowing whether a firm is subject to the Taping Rule may help investors make a more informed decision about doing business with a firm, NASD Regulation would make the information available to investors who inquire about a specific firm. In addition, NASD Regulation would highlight to investors (*e.g.,* on the NASD Regulation Web site) the ability to inquire through the PDP's toll-free telephone listing whether a particular firm is subject to the Taping Rule.

[14] *See, e.g.,* Comment letters from First Liberty, Schonberg, Banks, Nova, Personalized Investments, Basmagy, Bartholomew, E.E. Powell, Schwartz, Welch, Anonymous, Slenko, and Clark Dodge.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the 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 NASD. All submissions should refer to File No. SR-NASD–2002–04 and should be submitted by July 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–15289 Filed 6–17–02; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12)

TENNESSEE VALLEY AUTHORITY

Operating License Renewal of the Browns Ferry Nuclear Plant in Athens, AL

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of Record of Decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. On May 16, 2002, the TVA Board of Directors decided to adopt the preferred alternative (Refurbishment and Restart of Unit 1 With Extended Operation Of All Units) identified in TVA's Final Supplemental Environmental Impact Statement (FSEIS), Operating License Renewal Of The Browns Ferry Nuclear Plant In Athens, Alabama.

The FSEIS was made available to agencies and the public for additional comment in April 2002. A Notice of Availability of the FSEIS was published in the **Federal Register** on April 5, 2002. Under the selected alternative, in response to increasing demand for bulk power, TVA seeks to maximize the use of existing facilities to the greatest extent possible. This approach has the three-fold benefits of assuring future power supplies, avoiding the even larger capital outlays associated with new construction, and avoiding the environmental impacts resulting from siting and construction of new power generating facilities. Consistent with this approach, TVA has decided to seek to extend operation of Units 1, 2 and 3 of its Browns Ferry Nuclear Plant (BFN) located in Limestone County, Alabama. This will require obtaining a renewal of operating licenses for the units from the Nuclear Regulatory Commission (NRC). Renewal of the operating licenses would permit operation for an additional twenty years past the current (original) 40-year operating license terms which expire in 2013, 2014, and 2016 for Units 1, 2, and 3, respectively.

License Renewal by itself involves existing BFN facilities and does not require any new construction or modifications beyond normal maintenance and minor refurbishment. However, there are other proposed projects not directly related to license renewal that are connected to, or could affect, license renewal. One of these projects is the recovery of Unit 1, which has been in a non-operational state for 17 years. Other projects include the addition of new administration and modifications fabrication buildings and

the construction of a dry cask storage facility for storage of spent nuclear fuel. Even without license renewal or Unit 1 restart, BFN requires expansion of its spent fuel storage capacity in 2005.

FOR FURTHER INFORMATION CONTACT: Bruce L. Yeager, Senior NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (865) 632–8051 or email *blyeager@tva.gov*.

SUPPLEMENTARY INFORMATION: In its most recent annual report to the Southeastern Electric Reliability Council, TVA projected continued growth in demand of total net energy (baseload) of approximately 2 percent annually through the year 2010. TVA currently estimates that it will need approximately 2,000 Gigawatt-hours (GWh) annually by 2005, and 5,000–15,000 additional GWh annually by 2010. Continued energy generation from BFN is a major component of TVA's generating assets, representing 8 percent of generating capacity and about 13 percent of annual energy generation in FY 2000. Because of its low operating costs, BFN will continue to be a key generating asset even if some TVA customers were to elect other suppliers for some of their requirements under energy deregulation.

TVA has decided to seek to extend operation of Units 1, 2, and 3 at its BFN site located in Limestone County, Alabama. This will require obtaining a renewal of the unit's operating licenses from the Nuclear Regulatory Commission (NRC). Renewal of the operating licenses would permit operation for an additional 20 years past the current (original) 40-year operating license terms which expire in 2013, 2014, and 2016, for Units 1, 2, and 3, respectively.

An earlier EIS prepared by TVA evaluated the effects on the environment of construction and operation of the three BFN units. The Atomic Energy Commission (AEC), a former regulatory agency of the federal government which has been superceded by the NRC, participated in the preparation of that EIS as a cooperating agency. The AEC concluded on August 28, 1972, that the statement was adequate to support the original proposed license to operate the plant. Much of this material from the earlier EIS is incorporated by reference in TVA's current FSEIS. The current FSEIS for license renewal also incorporates by reference TVA's Energy Vision 2020 Programmatic EIS, which documented TVA's consideration of the strategies and programmatic issues related to both maintenance of existing generation capacity in TVA's power system and the addition of new generating capacity. TVA's FSEIS also referenced in whole or in part, applicable material covered in the NRC's *Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS)*, NUREG–1437.

Alternatives Considered

TVA considered three primary alternatives, i.e., No Action and two Action Alternatives. Reasonable alternatives ranged from ceasing operation altogether at BFN (when the current generating licenses expire) to maximizing utilization of the existing power production facilities at the BFN site by extending operation of all three units.

The No Action Alternative would result from a decision to not extend operation of the BFN units beyond the expiration dates of the current operating licenses. Since it currently appears economically infeasible to recover Unit 1 without license renewal, such a decision would effectively terminate any further consideration of restarting the unit at this time. Operation of Units 2 and 3 would cease upon expiration of their operating licenses in 2014 and 2016, respectively.

This No Action Alternative would not help meet the public demand for more energy from the TVA power system. If TVA took no action at all to meet growing demands, TVA's ability to continue to supply low cost, reliable power to the public would be impaired. The impacts of higher priced and undependable electric supplies would be manifested in customer hardship, potentially negatively affecting economic stability of the region served by TVA. Consequently it would be unreasonable for TVA to take no action at all to meet growing demands. Rather in this context, No Action means that TVA would turn to some other means of responding to energy demands on its power system (most likely obtaining power primarily from existing or newly constructed fossil-fuel-fired baseload sources). These means were assessed in TVA's Energy Vision 2020 EIS and are identified in the resource plans the TVA Board approved after completion of that EIS process.

Of the Action Alternatives, Alternative 1 was to continue to operate Units 2 and 3 at BFN for an additional 20-year period beyond the expiration dates of the current licenses. No major equipment changes were projected to be needed for continuing operation as-is, but some planned upgrades and additions would involve facilities modifications, such as extended power uprate (EPU) of Units 2 and 3 at 120 percent of originally licensed power level, as documented under other NEPA analyses. Due to the planned EPU of Units 2 and 3, a sixth mechanical draft cooling tower would be erected. This alternative would offset some, but not all, the potential need to obtain power from other sources as identified under the No Action alternative. It would entail some of the impacts associated with the No Action alternative, because of need to meet demand for power not covered by restart of Unit 1 (see Alternative 2).

Alternative 2 (TVA's preferred alternative and the alternative selected by the TVA Board) is to add refurbishment and restart of Unit 1 to Alternative 1 (i.e., extended operation of all three BFN units at the EPU level of 120 percent of the originally licensed power level). Restart of Unit 1 could occur as early as 2007. Unit 1 recovery would necessitate construction of a new administration building to make space available to incoming (temporary) workers and to move (permanent) office workers away from radiation sources associated with operating Unit 1 with hydrogen water chemistry.

Restarting Unit 1 under Alternative 2 would also require additional cooling tower capacity beyond that envisioned for Alternative 1. Sub-alternatives for necessary additional cooling tower capacity could be obtained through a combination of constructing new towers, refurbishing the old original cooling towers, or even dismantling and replacing one or more of the old original towers with an updated and more efficient design. Sub-alternatives assessed included:

- Sub-alternative 2A, the addition of two new linear mechanical draft cooling towers to the six that would be functional for operation of Units 2 and 3 at EPU, making a total of eight very similar cooling towers. Making room for these towers would require removal of most of a large hill which was created by excavation of drainage canals associated with construction of the original six cooling towers.
- Sub-alternative 2B, which is similar to 2A except that the two new cooling towers would be some type other than the current linear mechanical draft cooling towers, such as round mechanical draft or modified hyperbolic design.
- Sub-alternative 2C, which involves demolition of the remaining four original cooling towers and to construct five new large linear mechanical draft cooling towers, all in roughly the same location as the original six towers. The

size of the existing (relatively new) tower 3 would also be increased. This alternative would not require removal of a significant portion of the spoils hill adjacent to the cooling towers, but could involve lowering the height of the hill by several feet to decrease wind resistance.

• Alternative 2D, the addition of a sixth mechanical draft cooling tower in the currently vacant position (4) where a tower was destroyed by an accidental fire in 1986, but never replaced. This additional sixth cooling tower would be similar to that identified for the uprate of Units 2 and 3 as described for Alternative 1. However, this tower would be somewhat larger than the recently replaced 16-cell linear mechanical draft cooling tower 3.

Even without license extension or Unit 1 restart, BFN requires expansion of spent fuel storage capacity as a result of DOE's delay in receiving utility spent fuel. The site's spent fuel pools are slowly being filled and Unit 3 will lose full core off-load capability in 2005. In response, TVA is planning to implement new spent fuel storage capacity during 2005 in order to avoid impacting availability of Unit 3.

Dry cask storage at BFN will consist of building a secured fenced-in concrete storage pad in phases or sections. The current schedule calls for being able to begin storing fuel in 2005. This project would be required with or without EPU, license renewal, or Unit 1 recovery, but the size requirement for the total pad storage depends in part on how many units will be operating. The pad will be designed large enough to accommodate all known requirements. The location for the new dry cask storage facility would require tearing down the existing Modifications Fabrications Building and replacement construction with a new light commercial grade building.

Environmental Consequences

Analyses conducted for the SEIS indicate that no significant impacts would be expected as a result of implementing any of the action alternatives considered. These findings are primarily a result of the fact that BFN is already an existing facility operating under an NRC license and that the proposed extension of unit operations and restart of Unit 1 result in relatively minor changes to those operations that have the potential for environmental effects.

Under the design, commitments and conditions described in the FSEIS for the project, there would be no effects to the geologic setting, threatened or endangered species, wetlands, soils, recreation, or cultural resources. With the exception of carbon monoxide emissions, the impacts for any of the alternatives on ambient air quality, meteorology and climate are expected to be even less than those assessed in the original BFN EIS. The ambient air quality standard for carbon monoxide is still five orders of magnitude greater than emission estimates, so the impact is also considered negligible.

Minor, insignificant effects (predominantly from modifications or currently ongoing activities that would proportionally extend in time with relicensing or slightly increase with restart of Unit 1) are anticipated for generation of solid and hazardous waste, spent fuel management, groundwater resources, floodplains/flood risk, terrestrial resources, socioeconomics conditions, transportation, land use, visual resources, and environmental noise, as well as public and occupational safety and health. Proper implementation of best management practices and compliance with applicable laws, regulations and Executive Orders will help ensure that these impacts are negligible. TVA does not anticipate any significant changes to the radioactive effluent releases or exposures to the public from continuing 2-unit BFN operations through completion of the license renewal period. EPU and the addition of Unit 1 would increase effluent releases proportionally, however, the refined calculated doses are a small fraction of the applicable radiological dose limits and the total exposures to the public from 3-unit operation at EPU are expected to remain a small fraction of the regulatory dose limits.

Under the alternative selected with best management practices implemented, impacts of modifications on surface waters and aquatic ecological resources are expected to be insignificant. Restart and operation of Unit 1 would require upgrading of the cooling tower system and an increase of intake flow rates by approximately 10 percent. Thermal impacts to aquatic life would be insignificant because the plant would be operated to ensure that the maximum discharge temperature and the temperature rise between intake and discharge remain within approved regulatory limits. Use of cooling towers would increase, and on rare occasions when the cooling towers are unable to meet thermal limits, the plant would be derated to remain in compliance. Although significant impacts are not anticipated, TVA will also confirm expected levels of impingement and entrainment resulting from increased intake flow rates by monitoring under current 2-unit operation and following return of Unit 1 to service.

Under the selected alternative, modifications associated with Unit 1 recovery would result in impacts on population, employment and income over a span of about 5.5 years. The total number of workers involved in the modification phase would peak at about 3,000, although not all these are likely to be located at the plant site. Modifications could result in some scattered, short-term strain on community services, including police and emergency services, schools and housing market. Operation of Unit 1 in addition to current operation of Units 2 and 3 will require an increase in employment of about 150 permanent workers, which would be a small addition to the local economy.

Under the alternative selected, decommissioning of the units would be delayed by the 20-year license renewal period, providing an opportunity for decommissioning technology (including more advanced robotics) and the licensing framework to evolve and mature. In addition it becomes more likely that a permanent spent fuel repository would be available prior to completion of decommissioning.

Response to Comments on Final EIS

Although not required, TVA provided 30 days for the public to comment on the FSEIS. During this period, comments regarding the FSEIS were received from the U.S. Environmental Protection Agency (EPA), the Alabama Department of Environmental Management (ADEM), and a member of the public who supported the proposed actions. TVA considered all comments received on both the draft and final SEIS in completing the NEPA process and reaching its decision. Discussed below are a number of the more important comments on the FSEIS.

Based upon review of the FSEIS, EPA had five concerns: (1) TVA's stated preference for Alternative 2 with its 2D cooling option appeared to EPA to be inconclusively presented in the FSEIS; (2) cooling option 2D selected in the FSEIS was not presented in the DSEIS (but EPA correctly noted that this was very similar to the cooling option in Alternative 1); (3) cooling capacity and thermal discharge modeling was preliminary at the DSEIS stage and specifically for 2D was not included until the FSEIS; (4) the proposed action would likely contribute to the thermal load of the downstream 303(d) segment of the Tennessee River listed for temperature and other pollutants of concern, and (5) cooling option 2D provides the lowest capacity cooling of

the four presented cooling tower options and therefore would allow the hottest average thermal discharge.

ADEM commented that: the proposed action would likely contribute to the thermal loading of a 10 mile segment of the Tennessee River downstream of the BFN facility near the mouth of the Elk River and above Wheeler Dam. This segment has been identified as ''impaired'' on Alabama's 1998 and draft 2000 303(d) lists. One of the listed pollutants of concern for that segment is temperature. ADEM comments that because the segment is listed for temperature impairment, no additional thermal loading can be permitted until such time that a TMDL is developed or the stream is de-listed for temperature.

ADEM additionally noted that the current NPDES permit contains temperature limits based on a 316(a) demonstration that EPA approved in June 1977. This allows the plant to meet a relaxed temperature limit. ADEM commented that the NPDES permit can be re-opened and modified in the event ADEM determines through biological and/or water quality monitoring that more stringent limitations and/or monitoring requirements are necessary to ensure the protection and propagation of aquatic life in the Tennessee River.

ADEM stated that the impaired segment of the Tennessee River will be re-evaluated to determine whether the segment is impaired due to temperature and if so determined, then a TMDL will be developed. To facilitate that evaluation, ADEM expressed interest in receiving copies of TVA's water quality data, if not previously provided, as well as water quality models conducted as part of the Final SEIS.

With regard to the first EPA comment, the FSEIS stated on page 2–55 under the heading, The Preferred Alternative, that Alternative 2 was preferred by TVA and that sub-alternative 2D was the preferred option for additional cooling tower capacity.

At the time of release, the DSEIS presented a summary of preliminary modeling results indicating that opportunities existed to allow a reduced amount of additional cooling capacity and/or cooling tower operation in an environmentally acceptable manner. Given TVA's compliance with current thermal limits of the NPDES permit for BFN, there is no material difference between the potential thermal impacts to the environment among those cooling tower sub-alternatives presented in the DSEIS and Alternative 2D. In the event that thermal limits could not be maintained by operation of cooling towers (see further discussion below), compliance would typically be maintained by derating the plant.

As indicated in both the DSEIS and FSEIS, two-dimensional modeling analyses conducted to assess the potential thermal effects under worst case scenarios to the reservoir and 303(d) reach under the current NPDES permit conditions, do indicate a slight increase (0.4°F) in average reservoir water temperature in the 303(d) listed reach of Wheeler Reservoir for the proposed 3-unit operation (at uprated power levels) relative to the originally approved 3-unit operation. As discussed in the FSEIS, the impact of this projected worst case change on water resources in Wheeler Reservoir is expected to be insignificant. With the use of cooling towers and plant derates, if necessary, temperature effects are expected to be less in years of more typical hydrology and meteorology. ADEM intends to evaluate new information to determine if the listed section is still an impaired water body and, as appropriate, to develop a Total Maximum Daily Load (TMDL) for that section of the river. TVA will supply the data and information requested by ADEM and cooperate with ADEM regarding monitoring, evaluation of the listed stream reach and, if appropriate, development of a TMDL.

Currently, TVA operates cooling towers at BFN only when the water temperature of discharges approaches and presents the potential for exceeding an NPDES thermal limit. When this situation occurs, not all cooling towers are necessarily placed in service. To maximize the net generation of the plant, only those towers necessary to keep the water temperature below the thermal limits are operated. Thus, as long as derating is part of the operational strategy for maintaining the NPDES limits, there is no significant difference in the hottest average thermal discharge for any of the cooling tower sub-alternatives. Additionally, TVA is working towards improving its methods of predicting water temperatures in Wheeler Reservoir and optimizing the operation of the cooling system provided at BFN.

EPA also requested further clarification of the expected increase in intake flows necessary for Alternative 2 as reported in the DSEIS and the FSEIS. Further analyses of flow changes associated with the proposed actions following release of the DSEIS are as indicated in section 2.2.2 of the FSEIS; the expected increase in intake flows needed for Alternative 2 is 10 percent.

EPA requested clarification in the ROD concerning two noise related issues, i.e., (1) whether or not the 24-hour DNL for noise is also less than the EPA target of 55 DNL for Alternative 2D, as it was for Alternatives 2A, 2B, and 2C; and (2) whether or not the 24-hour DNLs for Alternative 2D are within FICON guidance (and therefore considered insignificant). If not, EPA suggested further consideration of using cooling fans with reduced noise emissions until consistent with FICON.

Table 4.3.19–1 of the FSEIS indicates Alternative 2D (the selected sub-alternative) has a 24-hour DNL of 53 dBA which produces an annual average DNL that is less than both HUD and EPA 24-hour DNL annual average guidelines even with the probable priority-of-use configuration for cooling towers. The 24-hour DNL for Alternative 2D is 1 dBA more than the 24-hour DNL for current operation and the increase is insignificant based on FICON recommendations. There are no significant noise consequences from Alternative 2D. However, paragraph 4.3.19.4 of the FSEIS would present a clearer picture if it first stated which alternatives are within FICON guidelines (2A, 2B, and 2D) and then discussed 2C which does not meet FICON guidelines for Paradise Shores.

Decision

On May 16, 2002, the TVA Board of Directors decided to adopt the preferred alternative (Alternative 2) to refurbish and restart BFN Unit 1, and to proceed with NRC license extensions for all three units at BFN. This decision took into account environmental considerations together with economic and technical aspects of the project. Proceeding with license extensions and Unit 1 restart is the best business decision for TVA and the Tennessee Valley in terms of power supply, power price, generation mix, return on investment, and avoidance of environmental impacts. This decision has the three-fold benefits of assuring future power supplies without the environmental effects resulting from operation of fossil fuel generating plants (including increased emissions of greenhouse gases), avoiding the even larger capital outlays associated with new construction, and avoiding the environmental impacts resulting from siting and construction of new power generating facilities. Additionally, TVA's Detailed Scoping, Estimating, and Planning project and the Final Supplemental Environmental Impact Statement conclude that Browns Ferry Unit 1 can be returned to safe operation in a well-controlled modifications effort and that operating the unit will have no significant, adverse impacts on the environment.

With regard to cooling tower sub-alternatives, sub-alternative 2D was selected as the cooling tower option that was both protective of the environment and best supported by economic analyses. This decision regarding cooling tower capacity was reached on the basis of consideration of current regulatory thermal limits for BFN, cooling capacities of the various tower sub-alternatives, computer modeling of the effects of cooling tower options on ability to meet those thermal limits, and estimated amounts and cost of plant derates required for each sub-alternative.

Environmentally Preferred Alternative

TVA has concluded that Alternative 2 is the environmentally preferable alternative. This alternative has the benefits of assuring future power supplies without relying upon fossil fuel generation and its associated environmental impacts, avoiding the environmental impacts resulting from siting and construction of new power generating facilities, and providing an opportunity for decommissioning technology (including more advanced robotics) and the licensing framework to evolve and mature. With regard to sub-alternatives for thermal cooling capacity, cooling towers are operated only as necessary to meet thermal discharge temperature limits. Given TVA's compliance with current thermal limits of the NPDES permit for BFN, and because of the way the plant operates when near the thermal limits, there is no material environmental difference between cooling tower alternatives, and one alternative is not clearly environmentally preferable compared to the other alternatives. Having greater cooling tower capacity would be environmentally preferable in the event of any extraordinary circumstances in which the permit limits could not be maintained.

Environmental Commitments

The FSEIS identifies appropriate measures to minimize or mitigate environmental impacts and these are being adopted here. These measures are generally of two types, i.e., physical changes incorporated during project design, modifications or construction, and programs and environmental controls initiated to meet regulatory standards.

- Mitigation measures to minimize potential air pollutant emissions during construction activities for the new Administration Building, the Modifications Fabrication Building, the dry cask storage facility, and the new cooling tower would be the best management practices that TVA uses for construction of any new facilities. These would include such measures as wetting ground surfaces as appropriate to reduce fugitive dust, requiring equipment and trucks to be well maintained and tuned for efficient fuel combustion, covering fuels and fueling connections to minimize evaporative losses and requiring contractors to adhere to such policies.
- TVA will confirm the expected levels of impingement and entrainment of fish by monitoring under current 2-unit operation and following return of Unit 1 to service. Although not expected, if based upon these monitoring studies it is determined that the location, design, construction, and capacity of the cooling water intake structure are causing unacceptable environmental impact, TVA will assess reasonable available/achievable technologies, operational measures and restoration measures to further minimize the adverse impact at the BFN site and institute those measures which in consultation with the permitting agencies are determined to be appropriate.
- The archaeological site identified in Spoils Disposal Area 1, along with an adequate buffer zone, would be excluded from the disposal area or Phase II testing would be conducted to confirm the significance of the site.
- TVA will further analyze several options for mitigating the potential noise increase at Paradise Shores prior to accepting the final design for the additional cooling tower from the selected vendor. Options include, but are not limited to: using low noise fans on the new cooling tower; instituting operational instructions to reduce noise; and soliciting other noise reduction options from the cooling tower vendor.

Dated: May 24, 2002.

John A. Scalice,

Chief Nuclear Officer and Executive Vice President, TVA Nuclear.

[FR Doc. 02–15276 Filed 6–17–02; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Office of the Secretary, DOT.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended) the notice announces the Department of Transportation's (DOT) intention to request an extension to a currently approved information collection.

DATES: Comments on this notice must be received August 19, 2002.

ADDRESSES: Four (4) copies of any comments should be sent to the Pricing and Multilateral Affairs Division (X–43), Office of International Aviation, Office of the Secretary, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bernice C. Gray or John H. Kiser, Office of the Secretary, Office of International Aviation, X–43, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2435.

SUPPLEMENTARY INFORMATION:

Title: Tariffs.

OMB Control Number: 2106–0009.

Expiration Date: September 30, 2002.

Type of Request: Extension of a currently approved information collection.

Abstract: Chapter 415 of Title 49 of the United States Code requires that every air carrier and foreign air carrier file with the Department of Transportation (DOT), publish and keep open (*i.e.* post) for public inspection, tariffs showing all ''foreign'' or international fares, and related charges for air transportation between points served by it, and any other air carrier or foreign air carrier when through services, fares and related charges have been established; and showing, to the extent required by DOT regulations, all classifications, rules, regulations, practices, and services in connection with such air transportation. Once tariffs are filed and approved by DOT, they become a legally binding contract of carriage between carriers and users of foreign air transportation.

Part 221 of the Department's Economic Regulations (14 CFR part 221) sets forth specific technical and substantive requirements governing the filing of tariff material with the DOT Office of International Aviation's Pricing and Multilateral Affairs Division. A carrier initiates an electronic tariff filing whenever it wants to amend an existing tariff for commercial or competitive reasons or when it desires to file a new one. Electronic tariffs filed pursuant to part 221 are used by carriers, computer reservations systems, travel agents, DOT, other government agencies and the general public to determine the prices, rules and related charges for international passenger air transportation. In addition, DOT needs U.S. and foreign air carrier passenger tariff information to monitor

international air commerce, carry out carrier route selections and conduct international negotiations.

New part 293 exempts carriers from their statutory and regulatory duty to file international tariffs in certain specific markets.

Respondents: The vast majority of the air carriers filing international tariffs are large operators with revenues in excess of several million dollars each year. Small air carriers operating aircraft with 60 seats or less and 18,000 pounds payload or less that offer on-demand air-taxi service are not required to file such tariffs.

Estimated Total Annual Burden on Respondents: 650,000 hours.

Estimated Number of Respondents: 230; Form(s) 13,340 electronic filings or applications per annum.

Average Annual Burden Hours per Respondent: 2,826 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington DC, on June 12, 2002.

John H. Kiser,

Chief, Pricing and Multilateral Affairs Division, Office of International Aviation.

[FR Doc. 02–15284 Filed 6–17–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–12469]

Merchant Marine Personnel Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Merchant Marine Personnel Advisory Committee (MERPAC). MERPAC provides advice and makes recommendations to the Coast Guard on matters related to the training, qualification, licensing, certification, and fitness of seamen serving in the U.S. merchant marine.

DATES: Applications should reach us on or before August 30, 2002.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–1), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001. Please submit applications to the same address.

FOR FURTHER INFORMATION CONTACT: Commander Brian J. Peter, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–0229, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: This notice and an application form are available on the Internet at *http://dms.dot.gov*. The application form is also available on the Internet at *http://www.uscg.mil/hq/g-m/advisory/index.htm*. You may also obtain an application by calling Mr. Mark Gould at (202) 267–0229; by e-mailing him at *mgould@comdt.uscg.mil*; by faxing him at (202) 267–4570; or by writing him at the location in **ADDRESSES** above.

MERPAC is chartered under the Federal Advisory Committee Act, 5 U.S.C. App. 2. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety and Environmental Protection, on matters of concern to seamen serving in our merchant marine, such as implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), as amended, and activities of regional examination centers.

MERPAC meets at least twice a year, once at or near Coast Guard Headquarters, Washington, DC, and once elsewhere in the country. Its subcommittees and working groups may also meet to consider specific tasks as required.

The Coast Guard will consider applications for seven positions that expire or become vacant in January 2003. It needs applicants with one or more of the following backgrounds to fill the positions:

(a) Licensed deck officer;

(b) Managerial employee of a shipping company;

(c) Licensed engineer;

(d) Member of the public;

(e) Unlicensed member of the engine department; and

(f) Two marine educators.

Each member serves for a term of three years. No member may serve more than two consecutive three-year terms. MERPAC members serve without compensation from the Federal Government; however, they do receive travel reimbursement and per diem.

In support of the policy of the Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

If you are selected as a member who represents the general public, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). Neither the report nor the information it contains may be released to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act [5 U.S.C. 552a].

Dated: June 10, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–15228 Filed 6–17–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request to Release Airport Property at the Cheyenne Airport, Cheyenne, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at Cheyenne Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before July 18, 2002.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Alan Wiechmann, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, DEN–600, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Mr. Gerald K. Olson, Director of Aviation, Cheyenne Airport, 200 East 8th Avenue, Cheyenne, Wyoming 82003–2210.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip J. Braden, Community Planner, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249–6361.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Cheyenne Airport under the provisions of the AIR 21.

On May 20, 2002, the FAA determined that the request to release property at Cheyenne Airport submitted by the city met the procedural requirements of the Federal Aviation Regulations, part 155. The FAA may approve the request, in whole or in part, no later than July 19, 2002.

The following is a brief overview of the request:

The Cheyenne Airport requests the release of .47 acres of airport of airport property to the Wyoming Department of Transportation, Cheyenne, Wyoming. The purpose of this release is to allow the Cheyenne Airport Board to sell the subject land to the Wyoming Department of Transportation for local roadway improvements. The FAA determined that the release of this property will not have an adverse affect on air operations or meeting the safety standards required. The sale of this parcel will provide funds for airport improvements.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, inspect the application, notice and other documents germane to the application in person at Cheyenne Airport, 200 East 8th Avenue, Cheyenne, Wyoming 82003–2210.

Issued in Denver, Colorado on May 30, 2002.

Alan E. Wiechmann,

Manager, Denver Airports District Office.

[FR Doc. 02–15140 Filed 6–17–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Plymouth & Lincoln Railroad Corporation

[Docket No. FRA–2002–12268]

The Plymouth & Lincoln Railroad Corporation has petitioned for a permanent waiver of compliance from the requirements of Subparts D (Testing for Cause), E (Identification of Troubled Employees), F (Pre-Employment Tests), and G (Random Alcohol and Drug Testing Programs) of the *Control of Alcohol and Drug Use regulation,* 49 CFR part 219.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2002–12268) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC, 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on June 12, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–15282 Filed 6–17–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Tioga Central Railroad

[Docket No. FRA–2002–11991]

The Tioga Central Railroad (TCR) seeks a waiver of compliance from certain provisions of the *Safety Glazing Standards, 49 CFR 223.11 and 223.15,* which requires certified glazing for three (3) locomotives, TIOC 14, TIOC 62 and TIOC 606, and six (6) coaches, specifically, TIOC 263, TIOC 365, TIOC 370, TIOC 410, TIOC 500 and TIOC 2930.

Additionally, this railroad operates in a rural area and there are no records showing any incidents of vandalism involving glazing. The TIOC operates at a speed not exceeding 20 miles per hour. The TIOC operates solely as a tourist, excursion railroad.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2002–11991) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, DC, on June 12, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–15283 Filed 6–17–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Customs Service

Reopening of Application Period for Participation in a National Customs Automation Program Test: First Phase of the Automated Commercial Environment (ACE) for the ACE Account Portal

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: A notice appeared in the **Federal Register** on May 1, 2002, announcing a 30 day application period for participation in the National Customs Automation Program test of the first phase of the Automated Commercial Environment (ACE) for the Account Portal. The testing of this ACE Account Portal is scheduled to commence no earlier than October 28, 2002 and will run for approximately two years. The test will allow participating importers and authorized parties to access their Customs data via a web-based Account Portal. The test is the first step toward the full electronic processing of commercial importations in the ACE with a focus on defining and establishing the importer's account structure. This document announces a reopening of the application period.

EFFECTIVE DATES: The test application period is reopened until August 1, 2002, for purposes of establishing the initial forty importers to participate in the test. Comments concerning this notice and all aspects of the announced test may be submitted at any time.

ADDRESSES: Written comments regarding this notice may be submitted to Ms. Hedwig Lock at U.S. Customs Service, 2850 Eisenhower Ave.—First Floor, Alexandria, Virginia 22314; e:mail address: *eisenhower@customs.treas.gov;* FAX number: (703) 329–5235. Applications to participate will only be accepted via e:mail sent to *eisenhower@customs.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Hedwig Lock, U.S. Customs Service, Office Of Field Operations, Trade Programs, Commercial Compliance, Account Management; Tel. (703) 317–3657; e:mail address: *eisenhower@customs.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2002, Customs published a general notice in the **Federal Register** (67 FR 21800) announcing Customs plan to conduct a National Customs Automation Program (NCAP) test of the first phase of the Automated Commercial Environment (ACE) for the Account Portal. The testing of this ACE Account Portal is scheduled to commence no earlier than October 28, 2002 and will run for approximately two years. The test will allow participating importers and authorized parties to access their Customs data via a web-based Account Portal. The test is the first step toward the full electronic processing of commercial importations in the ACE with a focus on defining and establishing the importer's account structure. The Account Portal has the ability to access, manage, and disseminate information in an efficient and secure manner.

Participants in this test will eventually have the opportunity to use the account management functions such as account access to their profile and transactional data via the web portal. Eventually the account owner will also have the option to delegate portal access. In the initial phase of the test program participants will only have access to static data and basic account profile information necessary to establish an account. In the later stages of the test, participants will have access to more extensive operational transaction data through the web portal.

In the notice announcing the test, Customs stated that it planned to select approximately forty importer accounts from the list of qualified applicants for the initial deployment of this test and stated that to be considered as eligible as one of the initial participants, applications must be received by June 1, 2002. (A primary benefit for the initial participants will be an early opportunity to provide direct input into the initial design of the Account Portal.) Customs also stated that additional participants may be selected throughout the duration of this test.

Because of insufficient applications received by Customs within the initial 30-day time frame, Customs is extending the application period until August 1, 2002, for those desiring to be one of the initial participants. While applications for participation may be submitted to Customs at any time, any applications received after Customs has selected forty participants will be considered on a waiting list basis pending expansion of the technology.

Anyone interested in participating in the test should refer to the test notice published in the **Federal Register** on May 1, 2002, for eligibility and application information.

Dated: June 13, 2002.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–15337 Filed 6–17–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–2G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–2G, Certain Gambling Winnings.

DATES: Written comments should be received on or before August 19, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internet (Larnice.Mack@irs.gov.), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Gambling Winnings.

OMB Number: 1545–0238.

Form Number: Form W–2G.

Abstract: Internal Revenue Code sections 6041, 3402(q), and 3406 require payers of certain gambling winnings to withhold tax and to report the winnings to the IRS. IRS uses the information to verify compliance with the reporting rules and to verify that the winnings are properly reported on the recipient's tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, state or local

governments, and non-profit institutions.

Estimated Number of Responses: 4,104,771.

Estimated Time Per Response: 19 min.

Estimated Total Annual Burden Hours: 1,272,479.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 6, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–15354 Filed 6–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Counseling for the Elderly Program Availability of Application Packages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Availability of tax counseling for the elderly (TCE) application packages.

SUMMARY: This document provides notice of the availability of Application Packages for the 2003 Tax Counseling for the Elderly (TCE) Program.

DATES: Application Packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 2003 Tax Counseling for the Elderly (TCE) Program is August 10, 2002.

ADDRESSES: Application Packages may be requested by contacting: Internal Revenue Service, 5000 Ellin Road, Lanham, MD, 20706, Attention: Program Manager, Tax Counseling for the Elderly Program, W:CAR:SPEC:FO:GA, Building C–7, Room 185.

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn Tyler, W:CAR:SPEC:FO:GA, Building C–7, Room 185, Internal Revenue Service, 5000 Ellin Road, Lanham, MD 20706. The non-toll-free telephone number is (202) 283–0189.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Public Law 95–600, (92 Stat. 12810), November 6, 1978. Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives the IRS authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 2003 budget has been approved, cooperative agreements will be entered into subject to appropriation of funds. Once funded, sponsoring agencies and organizations will receive a grant from the IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assistance in Section 21.006.

Dated: May 12, 2002.

Jim Grimes,

Director, Field Operations, Stakeholder Partnership, Education & Communication.

[FR Doc. 02–15109 Filed 6–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of establishment of new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e) (4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled ''The Revenue Program—Billing and Collections Records—VA'' (114VA17).

DATES: Comments on this new system of records must be received no later than July 18, 2002. If no public comment is received, the new system will become effective July 18, 2002.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed new system of records to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or email comments to ''*OGCRegulations@mail.va.gov*''. All relevant material received before July 18, 2002 will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, telephone (727) 320–1839.

SUPPLEMENTARY INFORMATION:

I. Description of the Proposed Systems of Records

In 1986, Pub. L. 99–272, Consolidated Omnibus Budget Reconciliation Act of 1985, enacted April 7, 1986, established the means test program and gave VA the authority to seek reimbursement from third party health insurance carriers for care provided to nonservice-connected veterans. Pub. L. 101–508, Omnibus Budget Reconciliation Act of 1990, enacted November 5, 1990, established per diem copayments, prescription copayments and gave VA the authority to seek reimbursement from third party health insurance carriers for care provided to service-connected veterans

for their nonservice-connected conditions. The Integrated Billing software in VistA located at each VA health care facility is an automated integrated billing system used to process billing of, and collections from, third party health insurance carriers for medical care or services received by a veteran for a nonservice-connected condition. The VA health care facilities are able to submit claims to third parties either electronically (EDI) or via paper. The use of electronic claims processing increases the efficiency of third party billing. In order to electronically submit claims, the third parties (health insurance carriers) require enrollment of health care providers from each VA health care facility. This enrollment process enables the third party payers to set up electronic databases to recognize claims from a specific VA health care facility, and to grant permission to the VA's health care clearinghouse to submit claims to a third party payer on behalf of each VA health care facility. The records and information in the system are also used for the billing of, and collections from, other Federal agencies for medical care or services received by an eligible beneficiary. The billing and collections for first party (veterans required to make copayments based on eligibility) is located at the VA Austin Automation Center (AAC), Austin, Texas. The Integrated Billing software in VistA at each VA health care facility creates a first party (veteran required to make copayments based on eligibility) statement based on medical care or services provided to a veteran for a nonservice-connected condition. The Integrated Billing software in VistA then transmits the first party statements to the AAC for printing and mailing to the veteran.

The purpose of this Billing and Collections system of records is to compile all relative information in order to: (1) Bill to or collect from third parties (insurance carriers) for medical care or services received by a veteran for a nonservice-connected condition; (2) bill to or collect from other Federal agencies for medical care or services received by an eligible beneficiary; (3) bill to or collect from a veteran required to make copayments based on eligibility (first party) for medical care or services received by a veteran for a nonservice-connected condition; (4) identify and/or verify insurance coverage of a veteran or veteran's spouse prior to submitting claims for medical care or services; (5) submit appeals to third party for non-reimbursement of claims for medical care or services provided to a veteran; (6) enroll health care providers, utilizing the Provider Healthcare Ongoing EDI Billing Enrollment software (PHOEBE), with third party health plans and VA's health care clearinghouse in order to electronically file claims for medical care or services; and (7) report analytical and statistical data related to management practices, reimbursement practices of insurance carriers, and billing and collection data. The information in this system of records may be retrieved by patient name, social security number or other assigned identifier as well as by provider name, social security number or other assigned identifier.

The information used for billing and collections was previously covered under the ''Patient Medical Record-VA'' (24VA136) system of records. We are establishing a new system of records to incorporate changes necessary for electronic billing and data exchange and to consolidate all billing and collections references into one system of records. This will provide one source of reference and will permit administrative ease when revisions or updates are required.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following routine use disclosures for information which will be maintained in the system:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.*, individually identifiable health information, and 38 U.S.C. 7332; *i.e.*, medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. On its own initiative, VA may disclose information, except for the names and home address of veterans and their dependents, to a Federal, State, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

2. Disclosure may be made to an agency in the executive, legislative, or judicial branch, or the District of Columbia's government in response to its request or at the initiation of VA, in connection with the letting of a contract, other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision. However, names and addresses of veterans and their dependents will be released only to Federal entities.

3. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Individuals sometimes request the help of a member of Congress in resolving some issue relating to a matter before VA. The member of Congress then writes VA, and VA must be able to give sufficient information to be responsive to the inquiry.

4. Disclosure may be made to National Archives and Records Administration (NARA) in records management inspections conducted under authority of Title 44 U.S.C.

NARA is responsible for archiving old records no longer actively used, but which may be appropriate for preservation; they are responsible in general for the physical maintenance of the Federal government's records. VA must be able to turn records over to these agencies in order to determine the proper disposition of such records.

5. Disclosure may be made to the Department of Justice and United States attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

6. Any information in this system of records, including personal information obtained from other Federal agencies through computer matching programs, may be disclosed for the purposes identified below to any third party, except consumer reporting agencies, in connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by VA. Information may be disclosed under this routine use only to the extent that it is reasonably necessary for the following purposes: (a) To assist VA in collection of title 38 overpayments, overdue indebtedness,

and/or costs of services provided individuals not entitled to such services; and (b) to initiate civil or criminal legal actions for collecting amounts owed to the United States and/or for prosecuting individuals who willfully or fraudulently obtain title 38 benefits without entitlement. This disclosure is consistent with 38 U.S.C. 5701(b)(6).

7. The name and address of a veteran, other information as is reasonably necessary to identify such veteran, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the veteran's indebtedness to the United States by virtue of the person's participation in a benefits program administered by VA may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the provisions of 38 U.S.C. 5701(g)(4) have been met.

8. The name of a veteran, or other beneficiary, other information as is reasonably necessary to identify such individual, and any information concerning the individual's indebtedness by virtue of a person's participation in a medical care and treatment program administered by VA, may be disclosed to the Treasury Department, Internal Revenue Service, for the collection of indebtedness arising from such program by the withholding of all or a portion of the person's Federal income tax refund. These records may be disclosed as part of a computer-matching program to accomplish these purposes.

The Debt Collection Act of 1982 provided the statutory authority for federal agencies to collect debt through administrative offset. The Debt Collection Improvement Act of 1996 expanded the statutory authority for The Treasury Offset Program (TOP) by requiring agencies to transfer delinquent non-tax debts over 180 days to the U.S. Treasury for the purpose of offsetting federal payments to collect delinquent debts owed the Federal government. VA must be able to disclose information as deemed necessary to accomplish this purpose.

9. Relevant information (excluding medical treatment information related to drug or alcohol abuse, infection with the human immunodeficiency virus or sickle cell anemia) may be disclosed to the Department of Health and Human Services (HHS) for the purpose of identifying improper duplicate payments made by Medicare fiscal intermediaries where VA authorized and was responsible for payment for medical services obtained at non-VA health care facilities.

The purpose of the review is for HHS to identify duplicate payments and initiate recovery of identified overpayments and, where warranted, initiate fraud investigations, or, to seek reimbursement from VA for those services which were authorized by VA and for which no payment, or partial payment by VA was made. The information to be disclosed to HHS for those patients authorized by VA to obtain medical services from non-VA health care facilities includes patient identifying information to include name, address, social security number, and date of birth, and dates of admission and discharge, diagnostic, surgical and procedures codes, and state and county of residence and zip code. These records may also be disclosed as part of an ongoing computer-matching program to accomplish these purposes.

10. The social security number, universal personal identification number and other identifying information of a health care provider may be disclosed to a third party where the third party requires the agency to provide that information before it will pay for medical care provided by VA.

Third party (insurance carriers) payers often require identifying information of healthcare providers before reimbursing the VA for medical treatment or services rendered to a veteran. In these situations, VA must be able to disclose the required identifying information, usually in the form of social security number or universal personal identification number.

11. Relevant information may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practical for the purposes of laws administered by VA, in order for the contractor to perform the services of the contract or agreement.

VA occasionally contracts out certain billing and collection functions when this would contribute to effective and efficient operations. VA must be able to give a contractor whatever information is necessary for the contractor to fulfill the services set forth in the contract or agreement. In these situations, safeguards are provided in the contract or agreement prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract or agreement.

12. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (a) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (b) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (c) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer-matching program to accomplish these purposes.

13. Patient identifying information may be disclosed from this system of records to any third party (insurance carrier) or Federal agency such as the Department of Defense, Office of Personnel Management and Department of Health and Human Services and VA and government-wide third-party insurers responsible for payment of the cost of medical care for the identified patients in order for VA to seek recovery of the medical care costs. These records may also be disclosed as part of a computer-matching program to accomplish these purposes.

VA must be able to provide relevant information to a third party in order to seek reimbursement for the medical care or services provided. The VA also must be able to provide relevant information to Federal agencies when medical care and services have been provided to patients through Sharing Agreements.

14. Relevant information, including the nature and amount of a financial obligation, may be disclosed, in order to assist VA in the collection of unpaid financial obligations owed the VA, to a debtor's employing agency or commanding officer so that the debtor-employee may be counseled by his or her Federal employer or commanding officer. This purpose is consistent with 5 U.S.C. 5514, 4 CFR 102.5, and section 206 of Executive Order 11222 of May 8, 1965 (30 FR 6469).

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: May 31, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

114VA17

SYSTEM NAME:

The Revenue Program—Billing and Collections Records—VA.

SYSTEM LOCATION:

Records are maintained at each VA health care facility, (in most cases, back-up computer tape information is stored at off-site locations). Address locations for VA facilities are listed in VA Appendix 1 of the biennial publication of VA Privacy Act Issuances. In addition, information from these records or copies of records may be maintained at the Department of Veterans Affairs (VA), 810 Vermont Ave. NW., Washington, DC; the VA Austin Automation Center (AAC), Austin, Texas; Veterans Integrated Service Network (VISN) Offices; and the VA Allocation Resource Center (ARC), Boston, Massachusetts.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Veterans who have applied for health care services under Title 38, United States Code, Chapter 17, and in certain cases members of their immediate families.

2. Beneficiaries of other Federal agencies.

3. Individuals examined or treated under contract or resource sharing agreements.

4. Individuals examined or treated for research or donor purposes.

5. Individuals who have applied for title 38 benefits but who do not meet the requirements under title 38 to receive such benefits.

6. Individuals who were provided medical care under emergency conditions for humanitarian reasons.

7. International Government responsible for pensioned members of allied forces (Allied Beneficiaries) who are provided health care services under Title 38, United States Code, Chapter 1.

8. Health care professionals providing examination or treatment to any individuals within VA health care facilities.

9. Health care professionals providing examination or treatment to individuals under contract or resource sharing agreements.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information related to:

1. The social security number and insurance policy number of the veteran and/or veteran's spouse. The record may include other identifying information (e.g., name, date of birth, age, sex, marital status) and address information (e.g., home and/or mailing address, home telephone number).

2. Insurance information specific to the veteran and/or spouse to include annual deductibles and benefits.

3. Diagnostic codes (ICD9–CM, CPT–4, and any other coding system) pertaining to the individual's medical, surgical, psychiatric, dental and/or psychological examination or treatment.

4. Charges claimed to an insurance company based on treatment/services provided to the patient.

5. Charges billed to those veterans who are required to meet copayment obligations for treatment/services rendered by the VA.

6. The name, social security number and/or universal personal identification number of health care providers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, sections 1710 and 1729.

PURPOSE(S):

The records and information are used for the billing of, and collections from, a third party (insurance carriers) or other Federal agencies for medical care or services received by a veteran for a nonservice-connected condition or from a first party, veteran required to make copayments. The records and information are also used for the billing of and collections from other Federal agencies for medical care or services received by an eligible beneficiary. The data may be used to identify and/or verify insurance coverage of a veteran or veteran's spouse prior to submitting claims for medical care or services. The data may be used to support appeals for non-reimbursement of claims for medical care or services provided to a veteran. The data may be used to enroll health care providers with health plans and VA's health care clearinghouse in order to electronically file third party claims. The records and information may be used for statistical analyses to produce various management, tracking and follow-up reports, to track and trend the reimbursement practices of insurance carriers, and to track billing and collection information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.*, individually identifiable health information, and 38 U.S.C. 7332; *i.e.*, medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. On its own initiative, VA may disclose information, except for the names and home address of veterans and their dependents, to a Federal, State, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

2. Disclosure may be made to an agency in the executive, legislative, or judicial branch, or the District of Columbia's government in response to its request or at the initiation of VA, in connection with the letting of a contract, other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision. However, names and addresses of veterans and their dependents will be released only to Federal entities.

3. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

4. Disclosure may be made to National Archives and Records Administration (NARA) in records management inspections conducted under authority of Title 44 U.S.C.

5. Disclosure may be made to the Department of Justice and United States attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

6. Any information in this system of records, including personal information obtained from other Federal agencies through computer-matching programs, may be disclosed for the purposes identified below to any third party, except consumer reporting agencies, in connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by VA. Information may be disclosed under this routine use only to the extent that it is reasonably necessary for the following purposes: (a) To assist VA in collection of title 38 overpayments, overdue indebtedness, and/or costs of services provided individuals not entitled to such services; and (b) to initiate civil or criminal legal actions for collecting amounts owed to the United States and/or for prosecuting individuals who willfully or fraudulently obtain title 38 benefits without entitlement. This disclosure is consistent with 38 U.S.C. 5701(b)(6).

7. The name and address of a veteran, other information as is reasonably necessary to identify such veteran, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the veteran's indebtedness to the United States by virtue of the person's participation in a benefits program administered by VA may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the provisions of 38 U.S.C. 5701(g)(4) have been met.

8. The name of a veteran, or other beneficiary, other information as is reasonably necessary to identify such individual, and any information concerning the individual's indebtedness by virtue of a person's participation in a medical care and treatment program administered by VA, may be disclosed to the Treasury Department, Internal Revenue Service, for the collection of indebtedness arising from such program by the withholding of all or a portion of the person's Federal income tax refund. These records may be disclosed as part of a computer-matching program to accomplish these purposes.

9. Relevant information (excluding medical treatment information related to drug or alcohol abuse, infection with the human immunodeficiency virus or sickle cell anemia) may be disclosed to the Department of Health and Human Services (HHS) for the purpose of identifying improper duplicate payments made by Medicare fiscal intermediaries where VA authorized and was responsible for payment for medical services obtained at non-VA health care facilities.

10. The social security number, universal personal identification number and other identifying information of a health care provider may be disclosed to a third party where the third party requires the agency to provide that information before it will pay for medical care provided by VA.

11. Relevant information may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practical for the purposes of laws administered by VA, in order for the contractor to perform the services of the contract or agreement.

12. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (a) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (b) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (c) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer-matching program to accomplish these purposes.

13. Patient identifying information may be disclosed from this system or records to any third party or Federal agency such as the Department of Defense, Office of Personnel Management, HHS and government-wide third-party insurers responsible for payment of the cost of medical care for the identified patients in order for VA to seek recovery of the medical care costs. These records may also be disclosed as part of a computer-matching program to accomplish these purposes.

14. Relevant information, including the nature and amount of a financial obligation, may be disclosed, in order to assist VA in the collection of unpaid financial obligations owed the VA, to a debtor's employing agency or commanding officer so that the debtor-employee may be counseled by his or her Federal employer or commanding officer. This purpose is consistent with 5 U.S.C. 5514, 4 CFR 102.5, and section 206 of Executive Order 11222 of May 8, 1965 (30 FR 6469).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), VA may disclose records from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper or electronic media.

RETRIEVABILITY:

Records are retrieved by name, social security number or other assigned identifier of the individuals on whom they are maintained or by specific bill number assigned to the claim of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to VA working and storage areas is restricted to VA employees on a ''need-to-know'' basis. Strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally,

VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Information in VistA may only be accessed by authorized VA personnel. Access to file information is controlled at two levels. The systems recognize authorized personnel by series of individually unique passwords/codes as a part of each data message, and personnel are limited to only that information in the file, which is needed in the performance of their official duties. Information that is downloaded from VistA and maintained on personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes. Access by Office of Inspector General (OIG) staff conducting an audit, investigation, or inspection at the health care facility, or an OIG office location remote from the health care facility, is controlled in the same manner.

3. Information downloaded from VistA and maintained by the OIG headquarters and Field Offices on automated storage media is secured in storage areas for facilities to which only OIG staff have access. Paper documents are similarly secured. Access to paper documents and information on automated storage media is limited to OIG employees who have a need for the information in the performance of their official duties. Access to information stored on automated storage media is controlled by individually unique passwords/codes.

4. Access to the VA Austin Automation Center (AAC) is generally restricted to AAC employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Information stored in the AAC databases may be accessed.

5. Access to records maintained at the VA Allocation Resource Center (ARC) and the VISN Offices is restricted to VA employees who have a need for the information in the performance of their official duties. Access to information stored in electronic format is controlled by individually unique passwords/codes. Records are maintained in manned rooms during working hours. The facilities are protected from outside access during non-working hours by the Federal Protective Service or other security personnel.

RETENTION AND DISPOSAL:

Paper records and information stored on electronic storage media are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

The official responsible for policies and procedures is the Director, Revenue Office (174), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. The local officials responsible for maintaining the system are the Director of the facility where the individual is or was associated.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA health care facility where care was rendered. Addresses of VA health care facilities may be found in VA Appendix 1 of the biennial publication of VA Privacy Act Issuances. All inquiries must reasonably identify the place and approximate date that medical care was provided. Inquiries should include the patient's full name, social security number, insurance company information, policyholder and policy identification number as well as a return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they were treated.

CONTESTING RECORD PROCEDURES:

(*See* Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

The patient, family members or guardian, and friends, employers or other third parties when otherwise unobtainable from the patient or family; health insurance carriers; private medical facilities and health care professionals; State and local agencies; other Federal agencies; VA regional offices; Veterans Benefits Administration automated record systems, including Veterans and Beneficiaries Identification and Records Location Subsystem—VA (38VA23) and the Compensation, Pension, Education and Rehabilitation Records—VA (58VA21/22); and various automated systems providing clinical and managerial support at VA health care facilities to include Veterans Health Information Systems and Technology Architecture (VistA) (79VA19).

[FR Doc. 02–15211 Filed 6–17–02; 8:45 am]
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Corrections

Federal Register

Vol. 67, No. 117

Tuesday, June 18, 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 TRANSPORTATION

Federal Transit Administration

49 CFR Part 624

[Docket No. FTA-2001-9877]

RIN 2132-AA64

Clean Fuels Formula Grant Program

Correction

In rule document 02–14547 beginning on page 40100 in the issue of Tuesday, June 11, 2002, make the following correction:

§ 624.9 [Corrected]

On page 40105, in the first column, §624.9 is corrected to read as set forth below:

§ 624.9 Formula.

The Clean Fuels Formula funds will be apportioned according to the following formula:

(a) *Areas with population 1,000,000 and above.* Two thirds of the funds available each fiscal year shall be apportioned to applicants with eligible projects in urban areas with a population of 1,000,000 and above. Of this, 50 percent shall be apportioned so that each applicant receives a grant in an amount equal to the ratio between:

(1) The number of vehicles in the bus fleet of the eligible applicant, weighted by the severity of nonattainment for the area in which the eligible applicant is located; and

(2) The total number of vehicles in the bus fleets of all eligible applicants in areas with a population of 1,000,000 and above, weighted by the severity of nonattainment for all areas in which those eligible projects are located as provided in paragraphs (c) and (d) of this section. The remaining 50 percent shall be apportioned such that each designated recipient receives a grant in an amount equal to the ratio between:

(i) The number of bus passenger miles of the eligible designated recipient, weighted by the severity of nonattainment of the area in which the eligible applicant is located as provided in paragraphs (c) and (d) of this section.

(ii) The total number of bus passenger miles of all eligible applicants in areas with a population of 1,000,000 and above, weighted by the severity of nonattainment of all areas in which those eligible applicants are located as provided in paragraphs (c) and (d) of this section.

(b) *Areas under 1,000,000 population.* The formula for areas under 1,000,000 in population is the same as paragraph (a) of this section, except the formula removes the pool of eligible applicants in areas with a population of 1,000,000 and above and replaces it with the pool of eligible applicants in areas with populations under 1,000,000.

(c) *Weighting factors.* (1) The weighting factor for ozone shall be determined based on the following factors.

(i) 1.0 if, at the time of the apportionment, the area is a maintenance area for ozone;

(ii) 1.1 if, at the time of the apportionment, the area is classified as a marginal ozone nonattainment area;

(iii) 1.2 if, at the time of the apportionment, the area is classified as a moderate ozone nonattainment area;

(iv) 1.3 if, at the time of the apportionment, the area is classified as a serious ozone nonattainment area;

(v) 1.4 if, at the time of the apportionment, the area is classified as a severe ozone nonattainment area;

(vi) 1.5 if, at the time of the apportionment, the area is classified as an extreme ozone nonattainment area;

(2) The weighting factor for CO shall be determined based on the factors:

(i) 1.0 if, at the time of the apportionment, the area is a maintenance area for carbon monoxide;

(ii) 1.2 if, at the time of the apportionment, the area is classified as a moderate carbon monoxide nonattainment area;

(iii) 1.3 if, at the time of the apportionment, the area is classified as a serious carbon monoxide nonattainment area.

(3) The number of buses in the fleet and the bus passenger miles shall be multiplied by the higher of the ozone or CO factors.

(d) *Additional adjustment.* The number of buses in the fleet and the bus passenger miles shall be further multiplied by a factor of 1.2 if the area is both nonattainment for CO and either nonattainment or maintenance for ozone.

(e) *Limitation on uses.* (1) Not less than 5 percent of the amount made available by or appropriated under 49 U.S.C. 5338 in each fiscal year to carry out this section shall be available for any eligible projects for which an application is received from a designated recipient for the purchase or construction of hybrid electric or battery-powered buses or facilities specifically designed to service those buses.

(2) Not more than 35 percent of the amount made available by or appropriated under 49 U.S.C. 5338 in each fiscal year to carry out this section may be made available to fund clean diesel buses.

(3) Not more than 5 percent of the amount made available by or appropriated under 49 U.S.C. 5338 in each fiscal year to carry out this section may be made available to fund 21 retrofitting or replacement of the engines of buses that do not meet the clean air standards of the Environmental Protection Agency, as in effect on the date on which the application for such retrofitting or replacement is submitted under § 624.5.

Note to § 624.9. Maximum grant amount. The amount of a grant made to a designated recipient under this section shall not exceed the lesser of—for an eligible project in an area with a population of less than 1,000,000, $15,000,000,—and for an eligible project in an area with a population of at least 1,000,000, $25,000,000; or 80 percent of the total cost of the eligible project. Any amounts that would otherwise be apportioned to a designated reciipient under this Note that exceed the amount described in this Note shall be reapportioned among other designated recipients in accordance with this section.

[FR Doc. C2–14547 Filed 6–17–02; 8:45 am]

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Federal Register

Tuesday,
June 18, 2002

Part II

Department of Housing and Urban Development

24 CFR Part 245

Tenant Participation in State-Financed, HUD-Assisted Housing Developments; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 245

[Docket No. FR–4611–P–01]

RIN 2502–AH55

Tenant Participation in State-Financed, HUD-Assisted Housing Developments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: HUD's current regulations protecting the statutory right of tenants in HUD-assisted and insured multifamily housing developments to organize and participate in the operation of the development do not currently cover State-financed housing developments that receive assistance under certain HUD programs. However, the statutory right of tenants to organize includes those State-financed housing developments. This proposed rule would extend the protection of tenant organizations to include State-financed developments assisted under certain HUD programs.

This rulemaking also proposed to make a minor technical correction to a citation in the existing tenant participation regulation, and to correct a mistaken cross-reference.

DATES: *Comment Due Date:* August 19, 2002.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–3000 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. The June 7, 2000, Final Rule

The final rule on tenant participation in multifamily insured and assisted housing, 65 FR 36272–36282 (June 7, 2000), expands tenant participation into new categories of HUD assisted housing pursuant to statutory changes enacted in 1998. Section 599 of the Quality Housing and Work Responsibility Act, Public Law 105–276 (approved October 21, 1998), codified at 12 U.S.C. 1715z–1b, extended the protection of tenant organizations to developments that receive project-based Section 8 assistance and enhanced vouchers. The June 7, 2000, final rule implements these provisions. In addition, section 183(a) of the Housing and Community Development Act of 1987, Public Law 100–242, 101 Stat. 1872, amended 12 U.S.C. 1715z–1b to expand tenant participation rights to include projects eligible for assistance under section 202 of the Housing Act of 1959, 12 U.S.C. 1701q. The June 7, 2000, regulation implements that change as well.

In addition, the June 7, 2000, rule establishes some basic parameters for the structure and activities of tenant organizations. These include a basic list of protected organizational activities that owners of multifamily developments covered under the rule must allow, such as distributing leaflets, contacting tenants, holding meetings, and formulating responses for owners to consider to certain management actions that affect tenants. The rule also defines the characteristics of legitimate tenant organizations, regulates tenant organizers, and establishes an enforcement scheme. These changes are codified at 24 CFR part 245, subpart B.

Section 245.10(a)(3) of the June 7, 2000, rule excludes State or local housing finance agency developments receiving assistance under section 236 of the National Housing Act or the Rent Supplement Program from the coverage of subpart B, which contains the specific protections and basic regulations for tenant organizations. The statutory language, however, gives HUD the authority to include these State-financed, HUD-assisted developments within the coverage of this subpart of the tenant participation rule.

Specifically, the governing law, section 202(a) of the Housing and Community Development Amendments of 1978, 12 U.S.C. 1715z–1b(a), provides that ''the term ''multifamily housing project'' means a project which is eligible for assistance as described in section 1715z–1a(c)of this title * * *.'' The protection for tenant organizations, found in 12 U.S.C. 1715z–1b(b)(4), applies to multifamily housing projects as so defined. Developments eligible for assistance under 12 U.S.C. 1715z–1a(c) include those assisted under section 236, 12 U.S.C. 1715z–1, or section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s (Rent Supplements). Section 12 U.S.C. 1715z–1a(b) explicitly states that projects eligible for assistance under section 1715z–1a are eligible ''without regard to whether such projects are assisted under the National Housing Act.'' Thus, since eligibility for assistance is not based on federal insurance, and since tenant organization rights apply based on the eligibility for assistance, HUD has authority to apply the statutory protections for tenant organizations to developments financed by State agencies, so long as the developments receive one of the eligible forms of assistance.

Through an oversight, HUD failed to apply tenant organizational rights to these State-financed developments in the 1999 proposed rule that was the basis of the June 7, 2000, final rule. One of the commenters on the proposed rule pointed out this issue and inquired regarding whether HUD would consider amending the rule to include State-financed, HUD assisted developments. HUD did not incorporate such a change in the June 7 rule because the proposed rule had not clearly given notice of this issue for general public comment. HUD believes that there should be express notice to the affected public and a full opportunity to comment specifically on this issue prior to making such a change, and therefore issues this new proposed rule regarding this matter.

II. This Proposed Rule

This rulemaking proposes to apply the protections for tenant organizations to State-financed developments receiving one of the covered forms of assistance, Rent Supplement or assistance under section 236. To effect this change, this rule simply amends 24 CFR 245.10(a)(3). In addition, this rule technically corrects an error in a legal citation in 24 CFR 245.135(a)(3), and corrects a mistaken cross-reference to ''subpart D'' in 24 CFR 245.10(a)(3), replacing it with the correct reference to ''subpart E.''

III. Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538)(UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does

not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities.

The proposed rule is exclusively concerned with the procedures governing tenant participation in multifamily housing projects and would have minimal economic impact on the owners of covered projects. Although the rule would require that owners permit tenants and tenant organizers to conduct reasonable activities related to the establishment or operation of tenant organizations, it would not impose any affirmative obligations on owners to assist tenant organizations in the conduct of these activities. For example, the owners of covered projects would not be required to contribute, economically or otherwise, to the preparation or distribution of leaflets and other informational materials developed by a tenant organization.

The proposed rule would permit tenant organizations to develop responses to economic proposals made by owners, such as rent increases and major capital additions. While HUD encourages owners to take these responses into consideration, the proposed rule would not require that owners modify or abandon their proposals based on the recommendations made by the tenant organization.

Although HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this proposed rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410–0500.

List of Subjects in 24 CFR Part 245

Condominiums, Cooperatives, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

For the reasons discussed in this preamble, HUD proposes to amend 24 CFR part 245 as follows:

PART 245—TENANT PARTICIPATION IN MULTIFAMILY HOUSING PROJECTS

1. The authority citation for 24 CFR part 245 continues to read as follows:

Authority: 12 U.S.C. 1715z–1b; 42 U.S.C. 3535(d).

2. Amend § 245.10, paragraph (a)(3) as follows:

§ 245.10 Applicability of part.

(a) * * *

(3) *State or local housing finance agency project.* The project receives assistance under section 236 of the National Housing Act (12 U.S.C. 1715z–1) or the Rent Supplement Program (12 U.S.C. 1701s) administered through a State or local housing finance agency, but does not have a mortgage insured under the National Housing Act or held by the Secretary. Subject to the further limitation in paragraph (b) of this section, only the provisions of subparts A, B and C of this part and of subpart E of this part for requests for approval of a conversion of a project from project-paid utilities to tenant-paid utilities or of a reduction in tenant utility allowances, apply to a mortgagor of such a project;

* * * * *

3. Make the following technical correction to section 245.135:

a. Revise the authority citation at section 245.135(a)(3) to read ''24 CFR part 24, subpart G.''

Dated: February 28, 2002.

John C. Weicher,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 02–15245 Filed 6–17–02; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Tuesday,
June 18, 2002

Part III

Department of Education

Office of Special Education Programs; Notice of Proposed Priority; State Program Improvement Grant Program; Notice

DEPARTMENT OF EDUCATION

Office of Special Education Programs; Notice of Proposed Priority; State Program Improvement Grant Program

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 the State Program Improvement Grant program administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act (IDEA), as amended. The Assistant Secretary may use this priority for competitions in fiscal year 2002 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve results for children with disabilities. The proposed priority is intended to ensure wide and effective use of program funds.

DATES: We must receive all comments on the proposed priority on or before July 18, 2002.

ADDRESSES: Address all comments about this proposed priority to Debra Sturdivant, U.S. Department of Education, 400 Maryland Avenue, SW., room 3527, Switzer Building, Washington, DC 20202–2641. Comments may also be sent through the Internet: *Larry.Wexler@ed.gov*

You must include the term ''State Improvement Grant'' in the electronic message.

FOR FURTHER INFORMATION CONTACT: Larry Wexler, U.S. Department of Education, 400 Maryland Avenue, SW., room 3630, Switzer Building, Washington, DC 20202–2641. *Telephone:* (202) 205–5390. FAX: (202) 205–9179. Internet: *Larry.Wexler@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.

Individuals with disabilities may obtain a copy of 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 proposed priority in room 3630, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., 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, 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. This notice does *not* solicit applications. In any year in which 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. The effect of each type of priority follows:

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)).

General Requirements

All projects funded under the proposed priority must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see section 606 of IDEA). In addition, all applicants and projects funded under the proposed priority must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA) State Program Improvement Grants Program.

Purpose of Program: The purpose of the State Program Improvement Grant program is to assist State educational agencies and their partners referred to in section 652(b) of IDEA with reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

Priority

Proposed Priority—Competitive Supplement to State Improvement Grants

Background

There are currently 36 State educational agencies that are funded under the State Improvement Grant program. These grants are meant to improve results for children with disabilities by addressing personnel training needs of States, as identified by the States, and have been an example of the Department's continuing effort to improve educational opportunities for all children. Congress established the State Program Improvement Grant program when it reauthorized IDEA in 1997. The money helps State educational agencies reform their systems for providing educational, early intervention and transitional services for children with disabilities. It also supports technical assistance for local schools and dissemination of knowledge about best practices. Seventy-five percent of each grant of up to five years must be used for professional development.

As part of the competition, each State, in conjunction with required partners, including local education agencies and other State agencies that provide special education services (at its option the

State may also include other partners such as the Governor, parents of children with disabilities, organizations representing individuals with disabilities and their parents, the lead State agency for part C IDEA, institutions of higher education within the State, etc.), submitted improvement plans focused on such areas as: (1) Training and personnel; (2) recruitment and retention of special education, related services and early intervention staff; (3) performance of children with disabilities; and (4) improving overall program effectiveness. The States receiving the grants have used the funds to implement the improvement strategies that they proposed in their plans. The Secretary anticipates that there will be additional fiscal year 2001 funds available subsequent to making awards under this year's competition. To utilize additional funds that may become available, the Secretary is proposing to conduct a separate competition under which only grantees from the FY 1999, 2000 and 2001 competitions would be eligible.

Priority

The Secretary proposes to establish a priority to award competitive supplements to State Improvement Grants awarded in 1999, 2000, or 2001 for the purpose of enhancing current grant activities. Applicants must describe additional activities that augment or complement those goals and activities that are already being implemented as part of their State Improvement Grant. Enhancement activities may be simply an expansion of activities already described in the narrative or they may be new activities that will improve the quality of the previously approved State improvement grant tasks. The Secretary is particularly interested in activities that focus on: (1) Retention and recruitment of highly qualified personnel; (2) the use of research-based reading intervention strategies; and (3) the use of research-based positive behavior supports.

Projects must—

(a) Enhance only those State Improvement Grant activities that can be shown, based on the project's data-based evaluation, to have impacted positively on the goal(s) of the project;

(b) Incorporate the expanded or new activities into the project's ongoing evaluation activities;

(c) Incorporate the expanded or new activities into the project's existing partnership agreements; and

(d) Ensure that the State uses not less than 75 percent of the funds (existing budget plus any supplemental funds) it receives under the grant for any fiscal year on professional development and training of regular education, special education, or related services personnel. Only 50 percent of the funds must be used on professional development if the State can demonstrate to the Department that it has sufficient personnel.

Under this priority, the Secretary will make, based on available funds, up to 36 awards with a project period of up to the amount of months remaining in the applicant's current State Improvement Grant subject to the requirements of 34 CFR 75.253(a) for continuation awards.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 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.

This document provides early notification of our specific plans and actions for this program.

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(Catalog of Federal Domestic Assistance Number: State Program Improvement Grants Program, 84.323A.)

Program Authority: 20 U.S.C. 1405, 1461, 1472, 1474, and 1487.

Dated: June 13, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–15301 Filed 6–17–02; 8:45 am]

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Federal Register

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FEDERAL REGISTER PAGES AND DATE, JUNE

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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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 ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

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(June 14, 2002; 116 Stat. 698)

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