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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA–99–04]

RIN 0581–AB59

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service (General Specifications) by reducing the maximum allowable bacterial estimate and somatic cell count in producer herd milk, by reducing the maximum allowable bacterial estimate in commingled milk, and by modifying the follow-up procedures when producer herd milk exceeds the maximum allowable bacterial estimate. These changes will align the General Specifications with model regulations relating to quality and sanitation requirements of the production and processing of manufacturing grade milk. In addition, this document amends the process by which drug residue test methods are evaluated and accepted to provide greater consistency with the Grade A milk program and makes certain other changes to the regulations for clarity and consistency.

EFFECTIVE DATE: August 28, 2002.

FOR FURTHER INFORMATION CONTACT: Susan Sausville, Chief, Dairy Standardization Branch, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2746, South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250–0230, (202) 720–7473, *Susan.Sausville@usda.gov.*

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866 and Regulatory Flexibility Act

This final 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 (OMB).

The final rule has been reviewed in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), and AMS has considered the economic impact of this action on small entities. It is determined that its provisions will not have a significant economic impact on a substantial number of small entities.

AMS provides, under the authority of the Agricultural Marketing Act of 1946, voluntary, user-fee funded inspection and grading services to approximately 400 dairy manufacturing plants. All of the dairy manufacturing plants utilizing the program would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.201).

The amendments will not have a significant economic impact because many State regulatory agencies have already incorporated these changes into State laws and regulations governing dairy manufacturing plants. The amendments will more closely align the General Specifications with mandatory State regulatory requirements in a number of areas including:

- The reduction of producer herd milk somatic cell count,
- The reduction of producer herd milk bacterial estimate,
- The follow-up protocol for producers whose herd milk exceeds the permitted bacterial estimate,
- The reduction in the bacterial estimate for commingled milk counts,
- The laboratory procedures that determine somatic cell content of producer herd milk, and
- The drug residue monitoring program.

Furthermore, the amendments will not have a significant economic impact since participation in the USDA-approved plant program is voluntary and the cost to those utilizing the program will not increase.

B. Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations or policies, unless they represent an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

C. Paperwork Reduction Act

The information collection requirements that appear in Part 58 of the regulations have been previously approved by OMB and assigned OMB Control Number 0581–0110 under the Paperwork Reduction Act (44 U.S.C. Chapter 35). This action will not impose any additional reporting or recordkeeping requirements on large or small dairy processors.

Background and Proposed Changes

Under provisions of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621—1627), the United States Department of Agriculture maintains a set of model regulations relating to quality and sanitation requirements for the production and processing of manufacturing grade milk. The Recommended Requirements are a separate document developed by AMS and recommended for State adoption and enforcement by the various States that regulate manufacturing grade milk. The purpose of the model requirements is to promote, through State adoption and enforcement, uniformity in State dairy laws and regulations relating to manufacturing grade milk. The Recommended Requirements are available from the Dairy Standardization Branch at the address provided in the **ADDRESSES** Section of this proposal. Additionally, the Recommended Requirements are available by accessing AMS' Home Page on the Internet at *www.ams.usda.gov/dairy/stand.htm.*

On November 12, 1996, AMS reduced the somatic cell count and the bacterial estimate provisions in the Recommended Requirements (61 FR 48120). This reduction was requested by the National Association of State Departments of Agriculture (NASDA) and was developed in cooperation with NASDA, dairy trade associations, and

producer groups. Now that State regulatory agencies have had an opportunity to implement these new limits and the dairy industry has had time to adapt to this new level, the Department is recommending similar changes be made in the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service. This alignment is needed in order to support the reduced levels of somatic cells and bacteria in the USDA Recommended Requirements and to promote improvements in the quality of raw milk utilized by USDA approved plants.

In addition, AMS has also identified additional areas where changes are being made to improve the regulations. All of the changes are explained in further detail below. AMS is amending the General Specifications as follows:

1. Reduce the Maximum Bacterial Estimate Permitted in Producer Herd Milk and Modify the Follow-Up Procedures When Herd Milk Exceeds the Maximum Allowable Bacterial Estimate

Current § 58.135 provides for a maximum permissible bacteria count in producer herd milk of 1,000,000 per milliliter. These amendments will reduce the maximum bacteria estimate permitted in producer herd milk in § 58.135 to 500,000 per milliliter for the following reasons:

The number of bacteria present in milk increases when the equipment and utensils used to collect and store the milk are improperly cleaned and sanitized. This number increases rapidly in milk that is not cooled promptly or that is not maintained at refrigerated temperatures throughout storage. Enhanced milk quality can be attained when dairy equipment is properly cleaned and sanitized and when milk is promptly cooled and stored at refrigerated temperatures. Improvements in sanitation practices and milk cooling equipment have resulted in enhanced milk quality. Therefore, to reflect these improvements in enhanced milk quality, this final rule will reduce the maximum permissible bacteria count in producer herd milk from 1,000,000 to 500,000 per ml. This and additional changes to § 58.135 are as follows:

Current § 58.135(a) references ''Standard Methods for the Examination of Dairy Products,'' for test methods that may be used to determine the bacterial estimate of the milk from individual producers. These amendments will identify this reference as a publication of the American Public Health Association and provide the following list of acceptable methods for determining the bacterial estimate of milk from individual producers: Direct Microscopic Clump Count, Standard Plate Count, Plate Loop Count, Pectin Gel Plate Count, Petrifilm Aerobic Count, Spiral Plate Count, Hydrophobic Grid Membrane Filter Count, Impedence/Conductance Count, and Reflectance Calorimetry.

Current § 58.135(b) provides bacterial estimate classifications for milk from individual producers of: No. 1 (Not over 500,000 per ml.), No. 2 (Not over 1,000,000 per ml.) and Undergrade (Over 1,000,000 per ml.). These amendments will lower the maximum allowable bacterial estimate in milk from individual producers to a maximum of 500,000 per ml., thus eliminating the need to classify milk as No.1, No. 2, or Undergrade. Therefore, this final rule will delete all information currently contained in § 58.135(b).

Current § 58.135(c) establishes the frequency at which individual producer milk is to be tested for bacterial estimate. These amendments maintain the current frequency, add a provision that the samples be analyzed in accordance with State regulations, and redesignate this information to § 58.135(b).

Current § 58.135(d) provides for the acceptance of milk based on information previously contained in § 58.135(b). These amendments will establish new procedures for an individual producer's milk that exceeds the maximum allowable bacterial estimate to provide consistency with the Recommended Requirements and many State regulations. This new procedure would require that the producer be notified of all bacterial estimates exceeding the maximum permitted. In addition, when two of the last four consecutive bacterial estimates exceed the maximum permitted, the appropriate regulatory authority will be notified. The producer will be provided a written notice that two of the last four bacterial estimates exceed the maximum permitted. When two out of the last four bacterial estimates exceed the maximum permitted, the amendments provide that an additional sample be taken, the result of which determines the acceptability of milk from a producer. These amendments will provide increased uniformity with producer herd milk bacteria and somatic cell follow-up procedures and provide greater adaptability to computer-based recordkeeping. This revised section will now appear as § 58.135(c). Revised § 58.135(b) and § 58.135(c), provide the information necessary to determine the acceptability of milk for bacterial content. Accordingly, § 58.135(d) is no longer needed and is being removed.

Current § 58.135(e) provides for retests based on information previously contained in § 58.135(b) and § 58.135(c). Revised § 58.135(b) and § 58.135(c) provide the information necessary to determine the acceptability of milk for bacterial content. Accordingly, § 58.135(e) is no longer needed and is being removed.

2. Reduce the Maximum Somatic Cell Count Permitted in Producer Herd Milk and Delete the Laboratory Screening Tests for Somatic Cells (No Changes are being Proposed for Goat Milk)

Current § 58.133(b)(5), § 58.133(b)(5)(ii), and § 58.133(b)(6) provide for a maximum somatic cell count in producer herd milk of 1,000,000 per milliliter. These amendments will revise these sections by reducing the maximum allowable somatic cell count in producer herd cow's milk to 750,000 per milliliter for the following reasons:

The number of leukocytes (somatic cells) present in milk increases as a result of mammary gland infection (mastitis) and provides information regarding the health of the dairy herd. Through effective herd management, dairy farmers have reduced the number of somatic cells present in raw milk. Identification and treatment of infected animals and improved milking techniques are two examples of herd management tools being used to reduce somatic cell counts. Therefore, to reflect these improvements in enhanced milk quality, this proposal would reduce the maximum permissible somatic cells in producer herd milk from 1,000,000 to 750,000 per ml. Because the number of somatic cells found in milk produced from healthy goats is normally higher than the number found in cow's milk, similar reductions are not being proposed for goat milk. Research indicates that physiological and microbiological differences exist in goat and cow milk independent of disease status which justify different standards between the two species.[1]

Current § 58.133(b)(2) lists the California Mastitis Test (CMT) and the Wisconsin Mastitis Test (WMT) as acceptable screening tests for somatic cells in producer herd milk samples. These amendments will revise § 58.133 (b)(2) by limiting the California Mastitis Test (CMT) and Wisconsin Mastitis Test (WMT) as screening tests for somatic

[1] G.F. Haenlein, L.S. Hinckley, ''Goat Milk Somatic Cell Count Situation in the United States'', Goat Management: (http://bluehen.ags.udel.edu/deces/goatmgt/gm-11.htm).

cells in goat herd milk samples for the following reasons:

The CMT and the WMT are used as screening tests for somatic cells. However, these screening tests are reliable for samples containing 1,000,000 or more somatic cells per milliliter. Because this action would reduce the maximum somatic cell count in cow's milk to 750,000 per ml., the CMT and WMT tests are not accurate enough to screen cow milk at the reduced level. Since the maximum somatic cell count for goat milk remains at 1,000,000 per ml. the CMT and WMT tests may continue to be used to screen goat milk. Also, since screening tests would no longer apply to cow's milk, the amendments will revise § 58.133(b)(3) to indicate that the listed tests are only considered confirmatory when performed on goat's milk. The revised lists in § 58.133(b)(3)—the Direct Microscopic Somatic Cell Count, the Electronic Somatic Cell Count (particle counter), and the Electronic Somatic Cell Count (fluorescent dye)—are tests that may be used to determine somatic cell count. In addition, this final rule provides for additional methods that may later be included in the latest edition of ''Standard Methods for the Examination of Dairy Products,'' a publication of the American Public Health Association. A copy of this document is available from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005.

3. Reduce the Maximum Permitted Bacterial Estimate in Commingled Milk

Current § 58.143(b) provides for a maximum allowable bacterial estimate in commingled milk in storage tanks of 3,000,000 per milliliter. These amendments will revise § 58.143(b) by reducing the maximum allowable bacterial estimate in commingled milk in storage tanks to 1,000,000 per milliliter for the following reasons:

Commingled milk is the combined milk from more than one producer. Farm improvements in sanitation practices and milk cooling equipment have resulted in enhanced milk quality. Therefore, to reflect these improvements and the resulting improvements of enhanced commingled milk quality, these amendments will reduce the maximum permissible bacterial estimate in commingled milk from 3,000,000 to 1,000,000 per milliliter.

4. Update Procedures for Excluding Milk

Current § 58.137(b) provides for the exclusion of milk that has been classified as Undergrade for bacterial estimate for more than four successive weeks. The amendments to § 58.135 will eliminate the bacterial-based classification of milk (No. 1, No. 2, or Undergrade). These amendments will revise § 58.137(b) to follow the protocol in § 58.135(c)(3) and exclude milk when three of the last five milk samples have exceeded the maximum bacterial estimate of 500,000 per ml.

Current § 58.137(c) provides for milk to be excluded when three out of the last five milk samples have exceeded the maximum somatic cell count level of 1,000,000 per ml. These amendments will lower the maximum somatic cell count level to 750,000 per ml. These amendments will revise § 58.137(c) to exclude milk when three out of the last five milk samples have exceeded the maximum somatic cell count level of 750,000 per ml.

5. Update the Drug Residue Testing Program

These amendments will revise § 58.133(c) to provide greater consistency with current Grade A milk requirements. When the General Specifications were revised in 1993, provisions detailing a drug residue testing program were added. At that time, those provisions were consistent with the drug residue program developed by the National Conference for Interstate Milk Shipment and used to monitor drug residues in Grade A milk. When the Grade A milk drug residue monitoring program was developed, the program allowed for the approval of test methods by the Virginia Polytechnic Institute and State University. Since that time, the Grade A milk program has changed to allow further independent evaluations and to not specifically be limited to the Virginia Polytechnic Institute and State University. These amendments will revise § 58.133(c) to provide greater consistency in the methods used to analyze samples for drug residues, and test methods would now be independently evaluated or evaluated by the Food and Drug Administration (FDA) and accepted by FDA as effective to detect drug residues at current safe or tolerance levels.

6. Update of 3–A Sanitary Standards References

These amendments will update the 3–A Sanitary Standard references in § 58.131(a)(2) to properly reflect the title of the two standards for dairy farm cooling and storage tanks. Therefore, we are revising § 58.131(a)(2) to reference the 3–A Sanitary Standard for Farm Cooling and Holding Tanks and the 3–A Sanitary Standard for Farm Milk Storage Tanks. In addition, these amendments will reflect a change in the title of the document detailing methods to produce culinary steam in § 58.127(d). The current title is the 3–A Accepted Practices for a Method of Producing Steam of Culinary Quality. Copies of each of these documents are available from the International Association for Food Protection, 6200 Aurora Ave., Suite 200 W, Des Moines, Iowa 50322–2863.

7. Inclusion of USDA Equipment Guidelines

These amendments will reference the ''USDA Guidelines for the Sanitary Design and Fabrication of Dairy Processing Equipment'' in § 58.128(o). The Guidelines address design and fabrication requirements for dairy processing equipment not covered by an existing 3–A Sanitary Standard.

8. Increase the Keeping Quality Test Temperature of Whipped Butter

Currently, § 58.346(b)(1) provides for a keeping quality test temperature for whipped butter of 70° F. These amendments will revise § 58.346(b)(1) by raising the keeping quality test temperature of whipped butter from 70° F to 72° F. These amendments will provide consistent keeping quality test temperature requirements for butter and whipped butter. Agricultural Marketing Service graders have confirmed that accurate keeping quality results can be achieved for both butter and whipped butter when using 72° F. Alignment of this temperature requirement will allow the storage of both butter and whipped butter samples in the same temperature-controlled keeping quality cabinet.

9. Addition of Reduced Fat, Light, and Fat Free Cottage Cheese and Ice Cream

Current § 58.505(b)(3) provides for the term lowfat cottage cheese. We are revising § 58.505(b)(3) by including terms consistent with FDA labeling requirements such as ''reduced fat,'' ''light,'' and ''fat free'' cottage cheese.

Current § 58.605(c) provides for the term ice milk. We are revising § 58.605(c) by replacing the term ice milk with terms consistent with FDA labeling requirements such as ''reduced fat,'' ''light,'' and ''fat free'' ice cream. These amendments will also add the following CFR references to the General Specifications: ''Nutrient content claims for fat, fatty acid, and cholesterol content of foods'' (21 CFR 101.62) and ''Requirements for foods named by use of a nutrient content claim and a standardized term'' (21 CFR 130.10).

10. Other Changes

• The amendments will correct § 58.124 by revising (j) and adding (k). These errors were inadvertent and occurred when the section was printed in the **Federal Register** and reproduced in the Code of Federal Regulations. A portion of the information in paragraphs (j) and (k) was inadvertently dropped from the CFR. Section 58.124(j) incorrectly contains the following wording: ''(j) proper storage conditions for packaging methods and materials.'' These amendments will correct this error by revising the information to read ''(j) proper storage conditions for ingredients and dairy products, or (k) suitable and effective packaging methods and materials.''

• These amendments will update citations made to CFR references in § 58.101(e), § 58.405(a), § 58.505, § 58.605, § 58.705(a), § 58.905, § 58.915, and § 58.938 to provide accurate information.

• These amendments will update Dairy Division to Dairy Programs in § 58.245 and § 58.812 and will update AMS Science Division to AMS Science and Technology Programs in § 58.126(e)(5)(ii) to reflect the name changes.

• These amendments will update the compositional standards in § 58.905 for evaporated milk, concentrated milk, and sweetened condensed milk to reflect compositional changes in the FDA Standards of Identity for evaporated milk (21 CFR 131.130), concentrated milk (21 CFR 131.115), and sweetened condensed milk (21 CFR 131.120).

• These amendments will update the association names and addresses in § 58.101 for the Association of Official Analytical Chemists, the American Public Health Association, and the International Association for Food Protection.

• These amendments will improve the current definition of a sanitizing treatment in § 58.101(e) and provide a definition consistent with terminology currently used in the dairy industry.

• These amendments will provide information in § 58.134(a) on how to obtain sediment standards.

• These amendments will include DA Instruction 918–RL in § 58.245 as a reference for methods of laboratory analysis and delete DA Instructions 918–103, 918–109–1, and 918–109–3. These DA instructions have been combined into 918–RL and no longer exist.

Public Comments

On August 13, 2001, the Department published a proposed rule (66 FR 42458) to amend the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service. The public comment period closed October 12, 2001. No comments were received.

List of Subjects in 7 CFR Part 58

Dairy Products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 58, subpart B, is amended as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR Part 58, continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Amend § 58.101 by revising paragraphs (e), (m), (v), and (w) to read as follows:

§ 58.101 Meaning of words.

* * * * *

(e) *Sanitizing treatment.* Subjection of a clean product contact surface to steam, hot water, hot air, or an acceptable sanitizing solution for the destruction of most human pathogens and other vegetative microorganisms to a level considered safe for product production. Such treatment shall not adversely affect the equipment, the milk or the milk product, or the health of consumers. Sanitizing solutions shall comply with 21 CFR 178.1010.

* * * * *

(m) *Official Methods of Analysis of the Association of Official Analytical Chemists.* ''Official Methods of Analysis of the Association of Official Analytical Chemists,'' a publication of the Association of Official Analytical Chemists International, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

* * * * *

(v) *Standard Methods for the Examination of Dairy Products.* ''Standard Methods for the Examination of Dairy Products,'' a publication of the American Public Health Association, 1015 Fifteenth Street, NW Washington, D.C. 20005.

(w) *3–A Sanitary Standards and Accepted Practice.* The latest standards for dairy equipment and accepted practices formulated by the 3–A Sanitary Standards Committees representing the International Association for Food Protection, the Food and Drug Administration, and the Dairy Industry Committee. Published by the International Association for Food Protection, 6200 Aurora Avenue, Suite 200 W, Des Moines, Iowa 50322–2863.

* * * * *

3. Amend § 58.124 by revising (j) and adding (k) to read as follows:

§ 58.124 Denial or suspension of plant approval.

* * * (j) proper storage conditions for ingredients and dairy products, or (k) suitable and effective packaging methods and material.

4. Amend § 58.126 by revising paragraph (e)(5)(ii) to read as follows:

§ 58.126 Buildings.

* * * * *

(e) * * *

(5) * * *

(ii) Approved laboratories shall be supervised by the USDA resident inspector in all aspects of official testing and in reporting results. Plant laboratory personnel in such plants may be authorized by USDA to perform official duties. The AMS Science and Technology Programs will provide independent auditing of laboratory analysis functions.

* * * * *

5. Amend § 58.127 by revising paragraph (d) to read as follows:

§ 58.127 Facilities.

* * * * *

(d) *Steam.* Steam shall be supplied in sufficient volume and pressure for satisfactory operation of each applicable piece of equipment. Culinary steam used in direct contact with milk or dairy products shall be free from harmful substances or extraneous material and only those boiler water additives that meet the requirements of 21 CFR 173.310 shall be used, or a secondary steam generator shall be used in which soft water is converted to steam and no boiler compounds are used. Steam traps, strainers, and condensate traps shall be used wherever applicable to insure a satisfactory and safe steam supply. Culinary steam shall comply with the 3–A Accepted Practices for a Method of Producing Steam of Culinary Quality, number 609. This document is available from the International Association for Food Protection, 6200 Aurora Avenue, Suite 200 W, Des Moines, Iowa 50322–2863.

* * * * *

6. Amend § 58.128 by revising paragraph (o) to read as follows:

§ 58.128 Equipment and utensils.

* * * * *

(o) *New replacement or modified equipment, processing system, or utensils.* All new, replacement, or modified equipment and all processing systems, cleaning systems, utensils, or replacement parts shall comply with the most current, appropriate 3–A Sanitary

Standards or 3–A Accepted Practices. If 3–A Sanitary Standards or 3–A Accepted Practices are not available, such equipment and replacements shall meet the general criteria of this section and the USDA Guidelines for the Sanitary Design and Fabrication of Dairy Processing Equipment available from USDA, Agricultural Marketing Service, Dairy Programs, Dairy Grading Branch, or by accessing the Internet at www.ams.gov/dairy/grade.htm.

* * * * *

7. Amend § 58.131 by revising the first sentence of paragraph (a)(2) to read as follows:

§ 58.131 Equipment and Facilities.

* * * * *

(a) * * *

(2) *Farm bulk tanks.* Farm bulk tanks shall comply with 3–A Sanitary Standards for Farm Cooling and Holding Tanks or 3–A Sanitary Standards for Farm Milk Storage Tanks, as applicable. * * *

* * * * *

8. Amend § 58.133 by revising paragraphs (b)(2), (b)(3), (b)(4), (b)(5) introductory text, (b)(5)(ii), (b)(6), and (c)(1) to read as follows:

* * * * *

§ 58.133 Methods for quality and wholesomeness determination.

* * * * *

(b) * * *

(2) A screening test may be conducted on goat herd milk. When a goat herd screening sample test exceeds either of the following results, a confirmatory test identified in paragraph (b)(3) of this section shall be conducted.

(3) Milk shall be tested for somatic cell content by using one of the following procedures or by any other method approved by Standard Methods for the Examination of Dairy Products (confirmatory test for somatic cells in goat milk):

(i) Direct Microscopic Somatic Cell Count (Single Strip Procedure). Pyronin Y-methyl green stain or ''New York'' modification shall be used as the confirmatory test for goat's milk.

(ii) Electronic Somatic Cell Count (particle counter).

(iii) Electronic Somatic Cell Count (fluorescent dye).

(4) The somatic cell test identified in paragraph (b)(3) of this section shall be considered as the official results.

(5) Whenever the official test indicates the presence of more than 750,000 somatic cells per ml. (1,000,000 per ml. for goat milk), the following procedures shall be applied:

(i) * * *

(ii) Whenever two out of the last four consecutive somatic cell counts exceed 750,000 per ml. (1,000,000 per ml. for goat milk), the appropriate State regulatory authority shall be notified and a written notice given to the producer. This notice shall be in effect as long as two of the last four consecutive samples exceed 750,000 per ml. (1,000,000 per ml. for goat milk).

(6) An additional sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (b)(5)(ii) of this section. If this sample also exceeds 750,000 per ml. (1,000,000 per ml. for goat milk), subsequent milkings shall not be accepted for market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the appropriate State regulatory agency when an additional sample of herd milk is tested and found satisfactory. The producer may be assigned a full reinstatement status when three out of four consecutive somatic cell count tests do not exceed 750,000 per ml. (1,000,000 per ml. for goat milk). The samples shall be taken at a rate of not more than two per week on separate days within a 3-week period.

(c) *Drug residue level.* (1) USDA-approved plants shall not accept for processing any milk testing positive for drug residue. All milk received at USDA-approved plants shall be sampled and tested prior to processing for beta lactam drug residue. When directed by the regulatory agency, additional testing for other drug residues shall be performed. Samples shall be analyzed for beta lactams and other drug residues by methods that have been independently evaluated or evaluated by the Food and Drug Administration (FDA) and that have been accepted by the (FDA) as effective to detect drug residues at current safe or tolerance levels. Safe and tolerance levels for particular drugs are established by the FDA and can be obtained from the U.S. Food and Drug Administration Center for Food Safety and Applied Nutrition, 200 C Street SW., Washington, DC 20204.

* * * * *

9. Amend § 58.134 by revising paragraph (a) to read as follows:

§ 58.134 Sediment content.

(a) *Method of testing.* Methods for determining the sediment content of the milk of individual producers shall be those described in the latest edition of Standard Methods for the Examination of Dairy Products. Sediment content shall be based on comparison with applicable charts of the United States Sediment Standards for Milk and Milk Products, available from USDA, AMS, Dairy Programs, Dairy Standardization Branch.

* * * * *

10. Revise § 58.135 to read as follows:

§ 58.135 Bacterial estimate.

(a) *Methods of Testing.* Milk shall be tested for bacterial estimate by using one of the following methods or by any other method approved by Standard Methods for the Examination of Dairy Products.

(1) Direct Microscopic clump count;
(2) Standard plate count;
(3) Plate loop count;
(4) Pectin gel plate count;
(5) Petrifilm aerobic count;
(6) Spiral plate count;
(7) Hydrophobic grid membrane filter count;
(8) Impedance/conductance count;
(9) Reflectance calorimetry.

(b) *Frequency of Testing.* A laboratory examination to determine the bacterial estimate shall be made on a representative sample of each producer's milk at least once each month at irregular intervals. Samples shall be analyzed at a laboratory in accordance with State regulations.

(c) *Acceptance of milk.* The following procedures shall be applied with respect to bacterial estimates:

(1) Whenever the bacterial estimate indicates the presence of more than 500,000 bacteria per ml., the producer shall be notified with a warning of the excessive bacterial estimate.

(2) Whenever two of the last four consecutive bacterial estimates exceed 500,000 per ml., the appropriate regulatory authority shall be notified and a written warning notice given to the producer. The notice shall be in effect so long as two out of the last four consecutive samples exceed 500,000 per ml.

(3) An additional sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (c) (2) of this section. If this sample also exceeds 500,000 per ml., subsequent milkings shall be excluded from the market until satisfactory compliance is obtained. Shipment may be resumed when an additional sample of herd milk is tested and found satisfactory.

11. Amend § 58.137 by revising paragraphs (b) and (c) to read as follows:

§ 58.137 Excluded Milk.

* * * * *

(b) Three of the last five milk samples have exceeded the maximum bacterial estimate of 500,000 per ml. (§ 58.135 (c)(3)).

(c) Three of the last five milk samples have exceeded the maximum somatic cell count level of 750,000 per ml. (1,000,000 per ml. for goat milk) (§ 58.133 (b)(6)); or

* * * * *

12. Revise § 58.143(b) to read as follows:

§ 58.143 Raw product storage.

* * * * *

(b) The bacteriological quality of commingled milk in storage tanks shall not exceed 1,000,000/ml.

13. Revise § 58.245 to read as follows:

§ 58.245 Method of sample analysis.

Samples shall be tested according to the applicable methods of laboratory analysis contained in either DA Instruction 918–RL as issued by the USDA, Agricultural Marketing Service, Dairy Programs, or Official Methods of Analysis of the Association of Analytical Chemists or Standard Methods for the Examination of Dairy Products.

14. Amend § 58.346 by revising paragraph (b)(1) to read as follows:

§ 58.346 Whipped butter.

* * * * *

(b) * * *

(1) Proteolytic count, not more than 50 per gram; yeast and mold count, not more than 10 per gram; coliform count, not more than 10 per gram; and keeping-quality test, satisfactory after 7 days at 72° F.

* * * * *

15. Amend § 58.405 by revising paragraph (a) to read as follows:

§ 58.405 Meaning of words.

* * * * *

(a) *Cheese.* The fresh or matured product obtained by draining after coagulation of milk, cream, skimmed, or partly skimmed milk or a combination of some or all of these products and including any cheese that conforms to the requirements of the Food and Drug Administration for cheeses and related cheese products (21 CFR part 133).

* * * * *

16. Amend § 58.505 by revising paragraphs (b)(1), (2), and (3), (c), (d), and the last sentence of paragraph (f) to read as follows:

§ 58.505 Meaning of Words.

* * * * *

(b) * * *

(1) *Cottage cheese dry curd.* The soft uncured cheese meeting the requirements of the Food and Drug Administration for dry curd cottage cheese (21 CFR 133.129).

(2) *Cottage Cheese.* The soft uncured cheese meeting the requirements of the Food and Drug Administration for cottage cheese (21 CFR 133.128).

(3) *Reduced Fat, Light, and Fat Free Cottage Cheese.* The products conforming to all applicable Federal Regulations including ''Cottage cheese,'' Food and Drug Administration (21 CFR 133.128), ''Dry curd cottage cheese,'' Food and Drug Administration (21 CFR 133.129), ''Nutrient content claims for fat, fatty acid, and cholesterol content of foods,'' Food and Drug Administration (21 CFR 101.62), and ''Requirements for foods named by use of a nutrient content claim and a standardized term,'' Food and Drug Administration (21 CFR 130.10).

(c) *Direct acidification.* The production of cottage cheese, without the use of bacterial starter cultures, through the use of approved food grade acids. This product shall be labeled according to the requirements of the Food and Drug Administration, 21 CFR 133.128 or 133.129, as appropriate.

(d) *Cottage Cheese with fruits, nuts, chives, or other vegetables.* Shall consist of cottage cheese to which has been added fruits, nuts, chives, and other vegetables. The finished cheese shall comply with the requirements of the Food and Drug Administration for cottage cheese (21 CFR 133.128).

* * * * *

(f) * * * The creaming mixture in its final form may or may not be homogenized and shall conform to the requirements of the Food and Drug Administration (21 CFR 133.128(b)).

17. Amend § 58.605 by revising paragraphs (a), (b), (c), (d), and (e).

§ 58.605 Meaning of words.

* * * * *

(a) *Ice cream.* The product conforming to the requirements of the Food and Drug Administration for ice cream (21 CFR 135.110).

(b) *Frozen custard.* The product conforming to the requirements of the Food and Drug Administration for frozen custard (21 CFR 135.110).

(c) *Reduced Fat, Light, or Fat free Ice Cream.* The products conforming to all applicable Federal Regulations including ''Ice cream and frozen custard,'' Food and Drug Administration (21 CFR 135.110), ''Nutrient content claims for fat, fatty acid, and cholesterol content of foods,'' Food and Drug Administration (21 CFR 101.62), and ''Requirements for foods named by use of a nutrient content claim and a standardized term,'' Food and Drug Administration (21 CFR 130.10).

(d) *Sherbet.* The product conforming to the requirements of the Food and Drug Administration for sherbet (21 CFR 135.140).

(e) *Mellorine.* The product conforming to the requirements of the Food and Drug Administration for mellorine (21 CFR 135.130).

* * * * *

§ 58.651 [Removed and Reserved].

18. Remove and reserve § 58.651.

19. Amend § 58.705 by revising paragraph (a) to read as follows:

§ 58.705 Meaning of words.

(a) *Pasteurized process cheese and related products.* Pasteurized process cheese and related products are the foods which conform to the applicable requirements of the Food and Drug Administration for cheeses and related cheese products (21 CFR part 133).

* * * * *

20. Revise § 58.812 to read as follows:

§ 58.812 Methods of sample analysis.

Samples shall be tested according to the applicable methods of laboratory analysis contained in either DA Instruction 918–RL, as issued by the USDA, Agricultural Marketing Service, Dairy Programs, or the Official Methods of Analysis of the Association of Official Analytical Chemists, or Standard Methods for the Examination of Dairy Products.

21. Amend § 58.905 by revising paragraphs (a), (b), and (c) to read as follows:

§ 58.905 Meaning of words.

* * * * *

(a) *Evaporated milk.* The liquid food made by evaporating sweet milk to such point that it contains not less than 6.5 percent of milkfat and not less than 16.5 percent of the total milk solids. The finished product shall conform to the requirements of the Food and Drug Administration for evaporated milk (21 CFR 131.130).

(b) *Concentrated milk, plain condensed milk.* The product which conforms to the standard of identity for evaporated milk except that it is not processed by heat to prevent spoilage. The container may be unsealed, and stabilizing ingredients are not used. The finished product shall conform to the requirements of the Food and Drug Administration for concentrated milk (21 CFR 131.115).

(c) *Sweetened condensed milk.* The liquid or semi-liquid food made by evaporating a mixture of sweet milk and refined sugar (sucrose) or any combination of refined sugar (sucrose) and refined corn sugar (dextrose) to such point that the finished sweetened

condensed milk contains not less than 28.0 percent of total milk solids and not less than 8.0 percent of milkfat. The quantity of sugar used is sufficient to prevent spoilage. The finished product shall conform to the requirements of the Food and Drug Administration for sweetened condensed milk (21 CFR 131.120).

* * * * *

22. Revise § 58.915 to read as follows:

§ 58.915 Batch or continuous in-container thermal processing equipment.

Batch or continuous in-container thermal processing equipment shall meet the requirements of the Food and Drug Administration for thermally processed low-acid foods packaged in hermetically sealed containers (21 CFR part 113). The equipment shall be maintained in such a manner as to assure control of the length of processing and to minimize the number of damaged containers.

23. Amend § 58.938 by revising paragraph (g) to read as follows:

§ 58.938 Physical requirements and microbiological limits for sweetened condensed milk

* * * * *

(g) *Composition.* Shall meet the minimum requirements of the Food and Drug Administration for sweetened condensed milk (21 CFR 131.120). In addition, the quantity of refined sugar used shall be sufficient to give a sugar-in-water ratio of not less than 61.5 percent.

* * * * *

Authority: (7 U.S.C. 1621–1627)

Dated: July 22, 2002.

A.J. Yates,

Administrator.

[FR Doc. 02–18980 Filed 7–26–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 02–40]

RIN 1515–AD04

Access to Customs Security Areas at Airports

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to those provisions of the Customs Regulations that concern standards for employee access to Customs security areas at airports that accommodate international air commerce. The principal amendments set forth in this document involve the addition of a biennial access approval reapplication requirement, an expansion of the grounds for denial of an application for access, the addition of a requirement that each employee granted access must report to Customs certain changes in the employee's circumstances, the inclusion of several new employer responsibilities, an expansion of the grounds for revocation or suspension of access, the inclusion of separate procedures for immediate revocation or suspension of access and for proposed revocation or suspension of access, and a limitation of the opportunity to have a hearing in a revocation or suspension action to only cases in which there is a genuine issue regarding a material fact. These changes are needed to enhance the security environment at airports in Customs security areas and are commensurate with the heightened enforcement posture of the Federal Government following the September 11, 2001, terrorist attacks on the United States.

DATES: Interim rule effective July 29, 2002; comments must be submitted by September 27, 2002.

ADDRESSES: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elizabeth Tritt, Passengers Programs, Office of Field Operations (202–927–0530).

SUPPLEMENTARY INFORMATION:

Background

On February 3, 1986, Customs published in the **Federal Register** (51 FR 4161) T.D. 86–12 setting forth an amendment to the Customs Regulations to require the use and display of a Customs-approved identification card, strip, or seal on identification cards worn by employees at airports accommodating international air commerce. This Customs-approved identification requirement applies to all persons (other than government law enforcement personnel) who are located at, or operate out of, or are employed by, affected airports and who request access to Customs security areas in order to perform functions associated with their employment. Those regulatory requirements were originally contained in § 6.12a of the Customs Regulations (19 CFR 6.12a) but are currently set forth as Subpart S of part 122 of the Customs Regulations (19 CFR part 122).

In the preamble portion of T.D. 86–12 Customs explained the need for, and purpose of, those regulatory provisions as follows: ''Customs finds it necessary to improve integrity and security in authorized inspection areas, due in large measure to the recent sharp increases in threats to airport security posed by terrorist organizations. The current regulations in 19 CFR part 6 are inadequate for controlling access to the Customs security areas to the extent necessary. The arrival of an aircraft from abroad necessitates the services of numerous persons representing various specialties, such as ground crews, refueling personnel, baggage handlers, and food service personnel, among others. While all of these persons may have legitimate business associated with the arrival of an international flight, Customs needs a method by which access to the aircraft and inspection areas will be restricted, as well as some assurance that the service personnel themselves have been found trustworthy by their employers. While the Federal Aviation Administration has general responsibility for security at airports, Customs has determined that it is necessary to amend 19 CFR part 6 to provide Customs with the needed authority and procedures to achieve these goals at the areas under the Customs jurisdiction. The purpose of this amendment is to establish an identification system for all employees whose duties require access to Customs security areas at airports handling international air commerce, with the exception of uniformed Federal, State, and local law enforcement personnel. Because of recent terrorist incidents at foreign airports, threats of violence at U.S. airports, and in an effort to improve the security of these areas by restricting access to authorized employees, Customs will require that employees apply for a Customs approved identification strip or seal to be affixed to existing identification cards once an authorized official of the employer attests that background checks of employment history have been conducted. Customs will issue the identification strip or seal, once satisfied that the issuance of the additional identification will neither endanger the revenue nor threaten the security of the entire security area (which may include the arriving airplane, ramp area, and Customs

baggage and passenger inspection facilities).''

The regulatory provisions contained in Subpart S of part 122 prior to the publication of this document consisted of §§ 122.181 through 122.188 (19 CFR 122.181 through 122.188) which may be summarized as follows:

Section 122.181 set forth a definition of the term ''Customs security area;''

Section 122.182 set forth the basic identification card, strip, or seal requirement (paragraph (a)), outlined certain employer responsibilities (paragraph (b)), set forth identification card, strip, or seal application procedures and employer bond requirements (paragraph (c)), provided for background checks of applicants (paragraph (d)), provided for the issuance of identification cards, strips, or seals to law enforcement officers and other Federal, State, and local officials without applying the paragraph (c) and paragraph (d) requirements (paragraph (e)), prescribed standards for the issuance of replacement identification cards, strips, and seals (paragraph (f)), and set forth standards for notifying Customs and surrendering the identification card, strip, or seal when it was no longer needed (paragraph (g));

Section 122.183 dealt with the denial of applications for access and included provisions regarding grounds for denial (paragraph (a)), notification of denial (paragraph (b)), appeal of denial (paragraph (c)), and further appeal of denial (paragraph (d));

Section 122.184 provided for removal of the identification card, strip, or seal from the employee where, for security reasons, a change in the nature of the identification was necessary;

Section 122.185 required a prompt written report in the event of a loss or theft of an identification card, strip, or seal and provided for replacement in accordance with § 122.182(f);

Section 122.186 provided for the removal and destruction of an identification card, strip, or seal that was presented by a person other than the one to whom it was issued and also provided that an approved identification card, strip, or seal may be removed from an employee by any Customs officer designated by the port director;

Section 122.187 covered the revocation or suspension of access and included grounds for revocation or suspension (paragraph (a)), provided for giving notice of the revocation or suspension to the employee with a copy to the employer (paragraph (b)), permitted the employee to file a written notice of appeal and to request a hearing in the notice of appeal (paragraph (c)), set forth rules for the conduct of a hearing (paragraph (d)), permitted the employee to submit additional written views after the hearing had been held (paragraph (e)), and provided for issuance and service of the decision after the hearing (paragraph (f)); and

Section 122.188 concerned temporary identification cards, strips, and seals and included provisions regarding the conditions for issuance of a temporary card, strip, or seal (paragraph (a)), the period of validity of the temporary card, strip, or seal (paragraph (b)), the application of the section to temporary employees and official visitors (paragraph (c)), and the revocation of a temporary card, strip, or seal and denial of temporary access (paragraph (d)).

The Need for Increased Security Enforcement Measures

The September 11, 2001, terrorist attacks involving four U.S. commercial aircraft underscored the importance of a properly maintained security environment at the nation's airport facilities. The nature of the attacks, which involved the use of aircraft as weapons against persons and property in the United States, and the nature of the perpetrators, who are believed to be affiliated with a terrorist organization that has an almost global network and that has declared its opposition to U.S. foreign policy and presence in the Middle East and its intention to engage in further attacks against the United States, support the conclusion that there is now, if anything, an even greater need for security precautions at airports than there was when the regulations described above were promulgated.

On December 6, 2001, the Federal Aviation Administration (FAA) published in the **Federal Register** (66 FR 63474) a final rule document entitled ''Criminal History Records Checks'' which amended its regulations to require each airport operator and each aircraft operator that has adopted a security program under 14 CFR part 107 or 14 CFR part 108 to conduct fingerprint-based criminal history record checks (CHRCs) for individuals if they have not already undergone CHRCs. These FAA rules, which took effect on the date of publication, apply to those who either have, or apply for, (1) unescorted access authority to the Security Identification Display Area (SIDA) of an airport, (2) authority to authorize others to have unescorted access to the SIDA, and (3) passenger and carry-on property screening functions. In the background portion of this final rule document the FAA first noted the September 11, 2001, terrorist attacks and related potential threats to U.S. civil aviation. The FAA went on to explain that the new rules were necessary because the current employment investigation method was not adequate, in particular, because the present method did not require CHRCs for all individuals. The FAA also noted that, by requiring that all employees in the specified positions undergo a CHRC based on their fingerprints, there may be some individuals who now are in the covered positions who will be disqualified under the resulting new checks.

Following the September 11, 2001, terrorist attacks, Customs similarly initiated a review of the security standards and procedures that apply for purposes of access to the Customs security areas at airports that accommodate international air commerce. That review included, among other things, a review of the existing regulatory standards and an expanded fingerprinting and associated criminal record checks of individuals currently having authorized access to a Customs security area. The review disclosed a number of problems that require immediate regulatory solutions in order to enable Customs to maintain an enhanced security environment at airports in those areas over which Customs must exercise some jurisdiction regarding access. The principal identified problem areas and solutions are as follows:

1. *Problem:* The grounds for denial of applications for access do not adequately reflect security considerations and, particularly as regards the applicant's criminal history, are not sufficiently specific. **SOLUTION:** The regulations should contain, as a basis for denial of access, a general statement regarding risk to public health, interest or safety, national security, or aviation safety. In addition, the regulations should amplify the criminal history grounds for denial of access by including, for example, the detailed list of aircraft-related and other specific violations listed in 14 CFR 107.209 and 14 CFR 108.229 as published by the FAA in the December 6, 2001, final rule document referred to above.

2. *Problem:* The present regulations do not provide an adequate legal framework for ongoing security enforcement regarding the conduct of employees who have access to the Customs security area, particularly with regard to events that occur after the application for approved access has been granted. *Solution:* The regulations should (1) affirmatively state the obligation of the employee to use the approved access only in furtherance of

his employment, (2) impose on an employee with approved access an ongoing obligation to inform Customs of any change in circumstances (for example an arrest or conviction) that would be a ground for denial or revocation or suspension of access and to inform Customs if the employee's access to the SIDA has been suspended under the FAA regulations, and (3) add as grounds for revocation or suspension of access a failure to comply with any of the foregoing requirements. In addition, the regulations should impose an obligation on the employer to report to Customs any change in an employee's circumstances that could affect his right to have access and also to ensure that each employee uses the approved access only in connection with his employment. A failure on the part of the employer to comply with these requirements could result in a claim for liquidated damages under the employer's bond.

3. *Problem:* The procedures for revocation or suspension of an employee's approved access to the Customs security area constitute an obstacle to enhanced security initiatives because they are inefficient, time consuming and burdensome, in principal part due to a provision in the regulations that gives the employee an absolute right to a hearing in connection with an appeal of a revocation or suspension action, even where there is no substantial issue of a material fact to be addressed at the hearing. At a number of locations where Customs performed fingerprinting and associated criminal record checks which disclosed grounds for a revocation or suspension action, in almost every case the affected employee requested a hearing, thus delaying the time at which the employee would lose access (and therefore extending the security risk) and straining the personnel and fiscal resources of Customs due to the costs associated with conducting a formal hearing. *Solution:* The regulations should (1) limit hearings on appeals to those cases in which there is a genuine issue of fact that is material to the revocation or suspension action, similar to the procedure used in courts of law whereby cases involving no issues of fact but rather only issues regarding the construction of the law are resolved in summary fashion on the written pleadings and without oral argument, (2) provide for issuance of access approval for a limited period of time and for reissuance only upon reapplication for a new period, with the new application (which may include fingerprinting and associated criminal record checks) being subject to de novo review, and (3) provide for immediate revocation or suspension of access in emergency situations involving public health, safety, or security, whether or not the affected employee would be entitled to a hearing upon appeal.

Accordingly, this document sets forth amendments to Subpart S of Part 122 of the Customs Regulations in order to address the problems discussed above, and the document also includes a number of other changes not related to security concerns that also represent improvements to those regulatory texts. Similar to the approach taken by the FAA in the December 6, 2001, final rule document referred to above, Customs believes that the immediate and ongoing significance of these security considerations requires that the regulatory amendments take effect on the date of publication in the **Federal Register** even though the document affords the public an opportunity to comment on the regulatory changes prior to publication of a final rule. The regulatory amendments are explained in more detail below except in the case of changes that involve merely minor, non-substantive wording changes.

Explanation of Regulatory Amendments

Before proceeding to a section-by-section discussion of the substantive amendments, it should be noted that throughout the texts the words ''identification card, strip, or seal'' and all variations of those words have been replaced by the words ''Customs access seal'' or ''access seal.'' This change in terminology is simply intended to reflect current practice whereby, upon approval of an application for access to the Customs security area, Customs places a seal on a card or other identification medium issued either by Customs or by the airport authority, air carrier or other employer of the employee to whom access is granted.

Section 122.181

In the first sentence the words ''or departing to'' have been added after the words ''arriving from'' to clarify that the Customs security area also includes airport areas that accommodate outgoing aircraft.

Section 122.182

Paragraph (a) has been revised to incorporate the following changes:

1. In the first sentence, a reference to ''aircraft passengers and crew'' has been added to reflect the Customs practice of not requiring those persons to apply for approved access, because those persons normally pass through the Customs security area only when going to or from an aircraft.

2. The second sentence has been modified by the addition of a requirement that the approved Customs access seal must be used only in furtherance of the employment of the person in whose name it is issued, in accordance with the description of duties submitted by the employer under paragraph (c)(1) of the section, for the reason explained above.

3. In the third sentence, references to immediate surrender of a Customs access seal ''as provided in paragraph (g) of the section'' (that is, when the access seal is simply no longer needed by the employee) and ''for any cause referred to in § 122.187(a)'' (that is, in connection with a revocation or suspension action) have been added to clarify that there are two contexts under the regulations which provide for the surrender of a Customs access seal.

4. Two new sentences have been added at the end to prescribe a 2-year validity period for an approved Customs access seal and to provide for retention beyond the applicable 2-year period only if a new application is filed under paragraph (c)(2) of the section.

In paragraph (b), which concerns employers' responsibilities, the references to bond liability have been removed because they can be more appropriately dealt with elsewhere (see the discussion of new § 122.189 below).

Paragraph (c), which sets forth access application requirements, has also been revised in order to set forth the prior text as paragraph (c)(1) headed ''initial application'' and in order to add a new text as paragraph (c)(2) headed ''reapplication.'' The following points are noted regarding the revised text:

1. In the first sentence of paragraph (c)(1), a requirement has been added regarding submission of a written request and justification for issuance prepared by the applicant's employer which must include a description of the duties to be performed by the employee while in the Customs security area. Customs believes that this requirement is necessary and appropriate because it (1) more clearly addresses the relationship of the applicant to the employer whose business affairs require the employee access, (2) provides additional relevant information to assist Customs in making an informed decision on the application, and (3) will assist Customs in monitoring the employee's activities within the Customs security area to determine whether they are necessary and proper.

2. At the end of paragraph (c)(1), a sentence has been added to cover the submission of fingerprints, proof of

citizenship or residency, and a photograph. These requirements, which were previously in paragraph (d) (which concerns background checks), have been moved to this paragraph because they are more directly related to the application submission process.

3. Paragraph (c)(2) sets forth requirements concerning the new reapplication procedure which must be initiated at least 30 days before the end of the 2-year approval validity period prescribed in paragraph (a) if the employee wishes to retain the approved Customs access seal beyond that 2-year period. The 30-days minimum reapplication period was chosen in order to ensure that Customs will have enough time to review and make a decision on the application before the current validity period lapses. This new paragraph (c)(2) provides that the new application must be filed in the same manner as that specified for an initial application under paragraph (c)(1), including the submission of fingerprints if required by the port director, and that the new application will be subject to a *de novo* review (which may include a background check) as if it were an initial application except that the employer's attestation under paragraph (d) will not be required if there has been no change in the applicant's employment.

Paragraph (d), which concerns background checks, has been revised in order to (1) remove the reference in the first sentence to employees hired on or after November 1, 1985, (2) remove the third sentence regarding employees hired before November 1, 1985, and (3) reflect the transfer of the fingerprint and proof of citizenship or residency provisions to paragraph (c) as discussed above. The removal of the provisions regarding the November 1, 1985, date is necessary because those provisions are out-of-date and because the effect of these provisions, which is to ''grandfather-in'' employees hired before that date as regards the type of employer attestation that must be made, is incompatible with the present heightened security enforcement posture of Customs as reflected in the other regulatory changes contained in this document. Customs further notes that those November 1, 1985, provisions also may not be compatible with the new background check requirements reflected in the December 6, 2001, FAA regulatory changes referred to above.

In paragraph (g), the first sentence (which provides that employers must give notice to Customs and surrender access seals to Customs when they are no longer needed by their employees) has been amended to also require notice and surrender where the 2-year approval validity period under paragraph (a) has expired and a new application under paragraph (c)(2) has not been approved, because Customs believes that this is also consistent with the principle that employers must bear some responsibility for ensuring the proper use of access seals by their employees, and the words ''who no longer requires access'' at the end of the second sentence have been removed to conform to the new wording of the first sentence. In addition, the penultimate sentence of the prior text (which concerned the filing of a summary of information regarding the disposition of access seals on a quarterly or other basis established by the port director) has been removed, see the discussion below regarding new paragraph (c) of § 122.184. Finally, the last sentence of the prior text (which allowed an employee to return to duties in the Customs security area within 1 year without having to file an application under paragraph (c)) has been removed because Customs now believes that an application should be required in that case.

Section 122.183

Paragraph (a), which concerns grounds for the denial of access to the Customs security area, has been revised primarily in order to address the first principal problem area discussed earlier in this document. The following points are noted regarding the changes reflected in the revised text:

1. In the introductory text of the paragraph, the words ''or pose an unacceptable risk to public health, interest or safety, national security, or aviation safety'' have been added after the words ''endanger the revenue or the security of the area.''

2. In paragraph (a)(1), which refers to any cause which would justify suspension or revocation under § 122.187, references to ''a demand for surrender'' and to ''§ 122.182(g)'' have been added to clarify (1) that § 122.187 refers not only to suspension or revocation of access but also to the surrender of the access seal and (2) that the surrender of access seals is also the subject of § 122.182(g). With regard to the latter point, it is noted that under the amended texts a failure to surrender an access seal, if demanded by Customs because the new 2-year approval period has expired and no new application has been approved, would constitute a basis for denial under this provision.

3. In paragraph (a)(2), which under the prior paragraph (a) text was the only other listed ground for denial and referred specifically to evidence of a pending or past investigation which establishes criminal, or dishonest conduct, or a verified record of such conduct, the words ''which establishes * * * such conduct'' have been replaced by the words ''establishing probable cause to believe that the applicant has engaged in any conduct which relates to, or which could lead to a conviction for, a disqualifying offense listed under paragraph (a)(4) of this section.'' This wording change was made in consideration of the addition of new paragraph (a)(4) discussed below, and it is noted in this regard that, with the addition of that new paragraph and new paragraph (a)(3) discussed below, the ''probable cause'' standard appears to be more appropriate in the instant context.

4. A new paragraph (a)(3) has been added which refers to a case in which an applicant has been arrested for, or charged with, a disqualifying offense listed under paragraph (a)(4) and disposition of the arrest or charge is pending. Customs believes that this paragraph is necessary to fill in the gap between the investigation stage described in revised paragraph (a)(2) and the disqualifying offense stage described in new paragraph (a)(4). It is also noted that the FAA regulations adopted in the December 6, 2001, final rule document referred to above contain provisions of similar effect (see 14 CFR 107.209(g)(1) and 14 CFR 108.229(g)(1)).

5. A new paragraph (a)(4) has been added which lists, as grounds for denial, disqualifying offenses which an applicant has been convicted of, or found not guilty of by reason of insanity, or has committed any act or omission involving, during the 14 preceding 5-year period (or any longer period as may be appropriate in a specific case) prior to the application or at any time while in possession of a Customs access seal. This paragraph was added to § 122.183 because Customs believes that the issue of established criminal conduct is appropriate for detailed treatment in an application context, and it is noted that under the prior Part 122 texts specific felony or misdemeanor conviction references were contained only in the context of revocation or suspension actions under § 122.187. The paragraph parallels the FAA approach reflected in the December 6, 2001, final rule document in referring to a ''disqualifying'' offense, in covering applicants found not guilty by reason of insanity, in referring to offenses both in the pre-application period and while having approved access, and in setting forth a detailed list of specific disqualifying offenses, including a

number of offenses relating directly to aircraft under Title 49 of the United States Code, for which access may be denied (see 14 CFR 107.209(d) and 14 CFR 108.229(d)). Customs believes that it is useful, wherever practicable, to use similar standards as those of the FAA since the need to address security concerns at airports is universal and the same people will be given access to areas at airports that are concentric or overlapping under the separate approval regimes of the two agencies. However, because the mission of Customs is not in all cases the same as that of the FAA, the new paragraph (a)(4) text also lists some additional offenses not included in the FAA regulations, including offenses that relate directly to a Customs statutory enforcement mandate.

6. A new paragraph (a)(5) has been added which sets forth as a ground for denial the fact that an applicant was denied unescorted access authority to an SIDA, or had his unescorted access authority to an SIDA suspended, pursuant to regulations of the FAA or other government agency. As in the case of new paragraph (a)(4) discussed above, this provision reflects the fact that there are security considerations that are common to Customs and to the FAA. Accordingly, if the FAA denies an application for unescorted access to an SIDA or suspends a person's access to an SIDA and Customs is aware of the FAA action, Customs must deny that person's application for access to the Customs security area because (1) the basic security concerns reflected in the FAA action would also apply in a Customs security area context and (2) granting the application, and thus allowing the person into the Customs security area, would be incompatible with the FAA action from an operational standpoint.

7. Finally, a new paragraph (a)(6) has been added to set forth as a ground for denial the fact that neither the employer nor Customs is able to complete a meaningful background check or investigation of the applicant because relevant records do not exist or are not available. Customs believes that this provision is necessary because the granting of an application should represent a knowledgeable, informed decision and thus should not be made in circumstances where there is a lack of relevant records. Thus, for example, an application could be denied if the applicant has not lived in the United States for a period of time sufficiently long for Customs to make a meaningful verification of any U.S. criminal history and a similar records check in the applicant's prior country of residence cannot be made.

In paragraph (c), which concerns the appeal of a denial, the last sentence has been revised to require the port director to advise the applicant of the procedures for filing a further appeal if the application is denied on appeal.

Paragraph (d), which concerns the further appeal of a denial, has been revised primarily in order to replace the references to the Commissioner (or his designee) with references to the director of field operations at the Customs Management Center having jurisdiction over the office of the port director who denied the application under paragraph (b) and considered the first appeal under paragraph (c). Thus, the further appeal of the denial would no longer be considered at Customs Headquarters in Washington, DC.

Section 122.184

The section heading has been revised and the prior section text has been designated as paragraph (a) in order to accommodate the addition of new paragraphs (b) and (c).

New paragraph (b), which is headed ''change in circumstances of employee,'' imposes on an employee who has approved access to the Customs security area an obligation to advise the port director in writing in the following cases: (1) Within 24 hours, if a circumstance arises that constitutes a ground for denial of access or for revocation or suspension of access and surrender of the employee's Customs access seal; (2) within 5 calendar days, if the employee was arrested or prosecuted for a disqualifying offense and there is a final disposition of that arrest or prosecution; and (3) within 24 hours, if the employee's unescorted access authority to an SIDA is suspended pursuant to the regulations of the FAA or other government agency. Customs believes that these new requirements, which impose an ongoing obligation on the part of each person granted access to the Customs security area to advise Customs of changes that might affect that person's access privilege, are appropriate and necessary for the security of the areas under Customs control. Customs also notes that a similar ongoing reporting requirement regarding disqualifying offenses is contained in the FAA regulations adopted in the December 6, 2001, final rule document referred to above (see 14 CFR 107.209(l)(2) and 14 CFR 108.229(l)(2)).

New paragraph (c), which is headed ''additional employer responsibilities,'' sets forth employer responsibilities that are in addition to those specified for employers under § 122.182. The first sentence requires an employer to report to Customs any known change in an employee's circumstances referred to in new paragraph (b), even if the employee also reports it under paragraph (b); even though this results in a duplicate reporting requirement, Customs believes that this result is justifiable because the overriding consideration is that Customs must have the information in question in order to properly assess the security risk and thus should not have to decide whether one possible source of the information is more appropriate than another. The second and third sentences set forth a quarterly reporting requirement regarding employees who have an approved access seal, including additions to and deletions from the previous report, and in effect replace the quarterly reporting requirement which has been removed from paragraph (g) of § 122.182 as discussed above. The fourth and final sentence, which requires each employer to take appropriate steps to ensure that an employee uses an approved Customs access seal only for employment-related purposes, is a corollary to the employee requirement added to the second sentence of paragraph (a) of § 122.182 as discussed above.

Section 122.187

Paragraph (a), which concerns the grounds for revocation or suspension of access to the Customs security area, has been divided into two subparagraphs, with paragraph (a)(1) constituting an expanded general statement regarding revocation or suspension and paragraph (a)(2) setting forth revised specific grounds for revocation or suspension. The following points are noted regarding the revised paragraph (a) texts:

1. Paragraph (a)(1)(i) requires the port director to immediately revoke or suspend an employee's access to the Customs security area and demand the immediate surrender of the employee's approved Customs access seal for any ground specified in paragraph (a)(2).

2. Paragraph (a)(1)(ii) authorizes the port director to propose the revocation or suspension of an employee's access to the Customs security area and the surrender of the employee's approved Customs access seal whenever in the judgment of the port director it appears, for any ground not specified in paragraph (a)(2), that continued access might ''pose an unacceptable risk to public health, interest or safety, national security, aviation safety, the revenue, or the security of the area.'' The quoted language parallels the wording of the introductory text of revised paragraph (a) of § 122.183 regarding access application denials and in effect

replaces prior paragraph (a)(4) of § 122.187 which referred to a circumstance in which continuation of privileges would ''endanger the revenue or security of the area.''

3. Paragraph (a)(2)(i) refers to an approved Customs access seal obtained through fraud or the misstatement of a material fact and thus corresponds to prior paragraph (a)(1). However, a reference to ''probable cause to believe'' has been added to the text because, given the priority that must be given to matters involving airport security, Customs believes that probable cause to believe (rather than actual proof of the fact) is the proper standard. Customs further notes in this regard that an employee's rights can be appropriately protected by the appeal procedure which affords the employee an opportunity to have a hearing if there is a genuine issue of fact that is material to the action taken by Customs.

4. Paragraph (a)(2)(ii) refers to employees convicted of crimes and thus corresponds to prior paragraph (a)(2). However, the new text differs from the prior text by (1) including a reference to an employee ''found not guilty by reason of insanity,'' (2) including ''probable cause to believe'' language, and (3) replacing the recitation of specific crimes by a cross-reference to ''an offense listed in § 122.183(a)(4).'' This text reflects the view of Customs that the commission of any ''disqualifying offense'' on which a denial of an application for access may be based under revised paragraph (a) of § 122.183 also should be a basis for revocation or suspension of access and surrender of the Customs access seal under § 122.187.

5. Paragraph (a)(2)(iii), which has no counterpart in the prior texts, refers to an employee who has been arrested for, or charged with, an offense listed in § 122.183(a)(4) and prosecution or other disposition of the arrest or charge is pending. It thus parallels the application denial terms of new paragraph (a)(3) of § 122.183.

6. Paragraph (a)(2)(iv), which has no counterpart in the prior texts, refers to an employee who has engaged in any other conduct (that is, conduct other than that covered by paragraph (a)(2)(ii) or (iii)) that would constitute a ground for denial of an application for access under § 122.183. This provision is the necessary counterpart of paragraph (a)(1) of § 122.183 in that it reflects the position of Customs that any ground for denial of an application for access to the Customs security area should also constitute a valid basis for revocation or suspension of access and surrender of the Customs access seal under § 122.187.

7. Paragraph (a)(2)(vi), which has no counterpart in the prior texts, refers to an employee who uses the approved access seal in connection with a matter not related to his employment or not constituting a duty described in the employer justification required by paragraph (c)(1) of § 122.182. This provision relates specifically to the employee requirement regarding proper use of the access seal which was added to the second sentence of paragraph (a) of § 122.182 as discussed above.

8. In paragraph (a)(2)(viii), which corresponds to prior paragraph (a)(6) and concerns bond sufficiency, the words ''for all employees of the bond holder'' have been added at the beginning of the text to clarify that, in the context of a revocation or suspension of access, bond sufficiency relates to all employees of the principal on the bond (that is, the employer) rather than to only one individual employee.

9. Paragraph (a)(2)(x), which has no counterpart in the prior texts, refers to the failure of an employee or employer to notify Customs of a change in circumstances under new paragraph (b) or (c) of § 122.184 and the failure of an employee to report the loss or theft of a Customs access seal as required by § 122.185.

Paragraph (b), which concerns the notice of revocation or suspension, represents a significant expansion of the prior text in order to address some of the principal problems mentioned earlier in this document. The changes involve both a modification of the prior paragraph (b) text and the addition of two new paragraphs (b)(1) and (b)(2). The following points are noted regarding these changes:

1. With regard to the prior text, which has become the introductory text of paragraph (b), a reference to demanding surrender of the Customs access seal has been added in the first sentence because this is an integral part of a revocation or suspension action. In addition, the text has been shortened and at the end provides that the notice of revocation or suspension will indicate whether the action is effective immediately or is proposed.

2. New paragraph (b)(1), which is headed ''immediate revocation or suspension,'' provides that the port director will issue a final notice of revocation or suspension when the revocation or suspension of access and surrender of the Customs access seal are effective immediately. The paragraph also allows the port director or his designee to deny physical access to the Customs security area and demand surrender of an approved Customs access seal at any time on an emergency basis prior to issuance of a final notice of revocation or suspension whenever in his judgment an emergency situation involving public health, safety, or security is involved. In the latter case, a final notice of revocation or suspension would be issued to the affected employee within 10 days of the emergency action. The text also provides that the final notice of revocation or suspension issued under this paragraph will state the specific grounds for the immediate action, will direct the employee to immediately surrender the access seal if he has not already done so, and will advise the employee that he may pursue one of the following two options: (1) Submit a new application for a Customs access seal on or after the 180th day after the date of the final notice of revocation or suspension; or (2) file a written administrative appeal with the port director in accordance with paragraph (c) within 30 days of the date of the final notice of revocation or suspension. Finally, the text provides that, if the employee chooses to appeal, the appeal may request that a hearing be held in accordance with paragraph (d) but in that case must demonstrate that there is a genuine issue of fact that is material to the revocation or suspension action. These new provisions regarding immediate revocation or suspension have been included to address one of the security and related concerns outlined in the third principal problem area mentioned earlier in this document.

3. New paragraph (b)(2), which is headed ''proposed revocation or suspension,'' is the alternative to an immediate action under paragraph (b)(1). Paragraph (b)(2)(i) concerns issuance of the notice of proposed revocation or suspension and provides that the notice will state the specific grounds for the proposed action, will inform the employee that he may continue to have access to the Customs security area and retain his access seal pending issuance of a final notice under paragraph (b)(2)(ii), and will advise the employee that he may file a written response with the port director within 10 days and may ask for a meeting with the port director to discuss the proposed action. Paragraph (b)(2)(ii) concerns the issuance of a notice of final determination regarding the employee's right of access to the Customs security area. It provides that if the employee does not respond to the notice of proposed action, or if the employee files

a timely response and the port director's final determination is adverse to the employee, the port director will issue a final notice of revocation or suspension within 30 days of the notice of proposed action, or within 30 days of receipt of the employee's response, which states the specific grounds for the action, directs the employee to immediately surrender the Customs access seal, and advises the employee that he may choose to pursue one of the two options specified under paragraph (b)(1), that is, reapplication or appeal. These paragraph (b)(2) provisions are not directly related to the security concerns that are the primary focus of this document, but Customs believes that they represent a distinct due process improvement over the prior proposed revocation or suspension notice procedures.

Paragraph (c), which concerns appeal procedures, represents a significant expansion of the prior text primarily in order to address the appeal hearing issue referred to in the third principal problem area outlined earlier in this document. The changes involve redesignation of the prior paragraph (c) text as paragraph (c)(1) with the heading ''filing of appeal'' and the addition of two new paragraphs (c)(2) and (c)(3). The following points are noted regarding redesignated paragraph (c)(1) and new paragraphs (c)(2) and (c)(3):

1. In redesignated paragraph (c)(1), the last sentence regarding requesting a hearing in the notice of appeal has been replaced by a new sentence that gives the port director discretion to allow more time for the employee to submit information in support of the appeal.

2. New paragraph (c)(2), which is headed ''action by the port director,'' provides that if the appellant requests a hearing, the port director will first review the appeal to determine whether there is a genuine issue of fact that is material to the revocation or suspension action. If a hearing is required because the port director finds that there is a genuine issue of fact that is material to the revocation or suspension action, a hearing will be held, and a decision on the appeal will be rendered, in accordance with paragraphs (d) through (f). On the other hand, if no hearing is requested or if a requested hearing is not required, no hearing will be held and the port director will forward the administrative record, together with the port director's response to any statements made in the notice of appeal, to the director of field operations at the Customs Management Center having jurisdiction over the office of the port director for a decision on the appeal under paragraph (c)(3).

3. New paragraph (c)(3), which is headed ''action by the director,'' provides for issuance of a written decision on the appeal by the director of field operations within 30 days based on the administrative record forwarded by the port director under paragraph (c)(2). The paragraph provides for transmittal of the decision to the port director for service on the employee and states that the decision on the appeal will constitute the final administrative action on the matter.

In paragraph (d), which concerns hearing procedures, a new sentence has been added at the beginning to restate the rule regarding when a hearing will be held, that is, only when requested in an appeal and only if the affected employee demonstrates that there is a genuine issue of fact that is material to the revocation or suspension action. In addition, except as regards designation of the hearing officer, all references to ''the Commissioner or his designee'' have been replaced by references to ''the director of field operations'' who will receive the appropriate record from the hearing officer for purposes of rendering a decision on the appeal.

The following changes have been made to paragraph (e) which provides for the submission of additional written views following the hearing: (1) References to the Commissioner or his designee in the prior text have been replaced by references to the director of field operations; (2) the words ''the employee'' in the prior text have been replaced by ''either party'' because Customs believes that both the employee and the government should have the opportunity to submit additional written views; (3) a sentence has been added to require that a copy of a submission be provided to the other party; and (4) two sentences have been added at the end to provide that the other party may within 10 days file a reply to a submission with the director of field operations, with a copy being provided to the other party, and to provide that no further submissions will be accepted. These changes have been included for due process or other procedural purposes and are not related to the security concerns addressed elsewhere in this document.

In paragraph (f), which concerns issuance of the decision after a hearing, the first sentence has been changed by the addition of a reference to consideration of ''any additional written submissions and replies made under paragraph (e)'' and by providing that the decision will be made by the director of field operations rather than by the Commissioner or his designee. In addition, a sentence has been added at the end stating that a decision on an appeal rendered under that paragraph will constitute the final administrative action on the matter. These procedural changes are also not related to security concerns.

New § 122.189

This new section, which is headed ''bond liability,'' is intended to clarify that a principal may face consequences for a failure to comply with the conditions of the bond required under § 122.182(c) which include an obligation to comply with the Customs Regulations applicable to Customs security areas at airports. This new section refers specifically to an employer because an employer would be a principal on the bond to whom specific requirements apply under § 122.182(b) and under new § 122.184(c).

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Inapplicability of Notice and Delayed Effective Date Requirements and the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes contained in this document are primarily intended to enhance the security environment at airports in those areas designated as Customs security areas. The amendments promote public safety and airport security and therefore are in the public interest. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim

regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0026.

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

The collection of information in these interim regulations is in § 122.182. This information is used by Customs to determine whether an individual's application for access to a Customs security area should be granted, to monitor current use of the access privilege by individuals, to determine whether an individual has engaged in conduct that might warrant revocation or suspension of access, and to determine whether access should be granted on a temporary basis. The likely respondents are individuals and business organizations including aircraft operators, airport operators, and subcontractors of aircraft and airport operators.

Estimated annual reporting and/or recordkeeping burden: 9,750 hours.

Estimated average annual burden per respondent/recordkeeper: 13 minutes.

Estimated number of respondents and/or recordkeepers: 30,000.

Estimated annual frequency of responses: 1.5.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the interim regulations.

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 the 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 startup costs and costs of operations, maintenance, and purchase of services to provide information.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Air transportation, Bonds, Customs duties and inspection, Penalties, Reporting and recordkeeping requirements, Security measures, Surety bonds.

Amendments to the Regulations

For the reasons set forth in the preamble, part 122, Customs Regulations (19 CFR part 122), is amended as set forth below.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. In § 122.181, the first sentence is amended by adding after the words ''arriving from'' the words '', or departing to,''.

3. In § 122.182:

a. Paragraph (a) is revised;

b. Paragraph (b) is amended by removing the words ''and liability'' in the paragraph heading and by removing the last sentence;

c. Paragraphs (c) and (d) are revised;

d. The first sentence of paragraph (e) is amended by removing the words ''identification card, strip, or seal'' and adding, in their place, the words ''Customs access seal'';

e. Paragraph (f) is amended by removing the word ''identification'' in the paragraph heading and adding, in its place, the words ''access seal'', by removing the words ''identification card, strip or seal'' in the introductory text and adding, in their place, the words ''Customs access seal'', and by removing the words ''identification card, strip, or seal'' in paragraph (f)(4) and adding, in their place, the words ''Customs access seal''; and

f. Paragraph (g) is amended by removing the word ''cards'' in the paragraph heading and adding, in its place, the words ''access seal'', by adding the words ''or where the 2-year period referred to in paragraph (a) of this section expires and a new application under paragraph (c)(2) of this section has not been approved,'' in the first sentence after the words ''or other reason,'', by removing the words ''identification card, strip, or seal'' in the first and second sentences and adding, in their place, the words ''Customs access seal'', by removing the words ''who no longer requires access'' at the end of the second sentence, and by removing the last two sentences.

The revisions read as follows:

§ 122.182 Security provisions.

(a) *Customs access seal required.* With the exception of all Federal and uniformed State and local law enforcement personnel and aircraft passengers and crew, all persons located at, operating out of, or employed by any airport accommodating international air commerce or its tenants or contractors, including air carriers, who have unescorted access to the Customs security area, must openly display or produce upon demand an approved access seal issued by Customs. The approved Customs access seal must be in the possession of the person in whose name it is issued whenever the person is in the Customs security area and must be used only in furtherance of that person's employment in accordance with the description of duties submitted by the employer under paragraph (c)(1) of this section. The Customs access seal remains the property of Customs, and any bearer must immediately surrender it as provided in paragraph (g) of this section or upon demand by any authorized Customs officer for any cause referred to in § 122.187(a). Unless surrendered pursuant to paragraph (g) of this section or § 122.187, each approved Customs access seal issued under paragraph (c)(1) of this section will remain valid for 2 years from January 1, 2002, in the case of a Customs access seal issued prior to that date and for 2 years from the date of issuance in all other cases. Retention of an approved Customs access seal beyond the

applicable 2-year period will be subject to the reapplication provisions of paragraph (c)(2) of this section.

* * * * *

(c) *Application requirements*—(1) *Initial application.* An application for an approved Customs access seal, as required by this section, must be filed by the applicant with the port director on Customs Form 3078 and must be supported by a written request and justification for issuance prepared by the applicant's employer that describes the duties that the applicant will perform while in the Customs security area. The application requirement applies to all employees required to display an approved Customs access seal by this section, regardless of the length of their employment. The application must be supported by the bond of the applicant's employer or principal on Customs Form 301 containing the bond conditions set forth in § 113.62, § 113.63, or § 113.64 of this chapter, relating to importers or brokers, custodians of bonded merchandise, or international carriers. If the applicant's employer is not the principal on a Customs bond on Customs Form 301 for one or more of the activities to which the bond conditions set forth in § 113.62, § 113.63, or § 113.64 relate, the application must be supported by an Airport Customs Security Area Bond, as set forth in appendix A of part 113 of this chapter. The latter bond may be waived, however, for State or local government-related agencies in the discretion of the port director. Waiver of this bond 29 does not relieve the agency in question or its employees from compliance with all other provisions of this subpart. In addition, in connection with an application for an approved Customs access seal under this section:

(i) The port director may require the applicant to submit fingerprints on form FD–258 or on any other approved medium either at the time of, or following, the filing of the application. If required, the port director will inform the applicant of the current Federal Bureau of Investigation user fee for conducting fingerprint checks and the Customs administrative processing fee, the total of which must be tendered by, or on behalf of, the applicant with the application; and

(ii) Proof of citizenship or authorized residency and a photograph may also be required.

(2) *Reapplication.* If a person wishes to retain an approved Customs access seal for one or more additional 2-year periods beyond the 2-year period referred to in paragraph (a) of this section, that person must submit a new application no later than 30 calendar days prior to the start of each additional period. The new application must be filed in the manner specified in paragraph (c)(1) of this section for an initial application, and the port director may also require the submission of fingerprints as provided in paragraph (c)(1)(i) of this section. The new application will be subject to review on a de novo basis as if it were an initial application except that the written attestation referred to in paragraph (d) of this section will not be required if there has been no change in the employment of the applicant since the last attestation was submitted to Customs.

(d) *Background check.* An authorized official of the employer must attest in writing that a background check has been conducted on the applicant, to the extent allowable by law. The background check must include, at a minimum, references and employment history, to the extent necessary to verify representations made by the applicant relating to employment in the preceding 5 years. The authorized official of the employer must attest that, to the best of his knowledge, the applicant meets the conditions necessary to perform functions associated with employment in the Customs security area. Additionally, the application may be investigated by Customs and a report prepared concerning the character of the applicant. Records of background investigations conducted by employers must be retained for a period of one year following cessation of employment and made available upon request of the port director.

* * * * *

4. In § 122.183, paragraph (a), the last sentence of paragraph (c), and paragraph (d) are revised to read as follows:

§ 122.183 Denial of access.

(a) *Grounds for denial.* Access to the Customs security area will not be granted, and therefore an approved Customs access seal will not be issued, to any person whose access to the Customs security area will, in the judgment of the port director, endanger the revenue or the security of the area or pose an unacceptable risk to public health, interest or safety, national security, or aviation safety. Specific grounds for denial of access to the Customs security area include, but are not limited to, the following:

(1) Any cause which would justify a demand for surrender of a Customs access seal or the revocation or suspension of access under § 122.182(g) or § 122.187;

(2) Evidence of a pending or past investigation establishing probable cause to believe that the applicant has engaged in any conduct which relates to, or which could lead to a conviction for, a disqualifying offense listed under paragraph (a)(4) of this section;

(3) The arrest of the applicant for, or the charging of the applicant with, a disqualifying offense listed under paragraph (a)(4) of this section on which prosecution or other disposition is pending;

(4) A disqualifying offense committed by the applicant. For purposes of this paragraph, an applicant commits a disqualifying offense if the applicant has been convicted of, or found not guilty of by reason of insanity, or has committed any act or omission involving, any of the following in any jurisdiction during the 5-year period, or any longer period that the port director deems appropriate for the offense in question, prior to the date of the application submitted under § 122.182 or at any time while in possession of an approved Customs access seal:

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation (49 U.S.C. 46306);

(ii) Interference with air navigation (49 U.S.C. 46308);

(iii) Improper transportation of a hazardous material (49 U.S.C. 46312);

(iv) Aircraft piracy in the special aircraft jurisdiction of the United States (49 U.S.C. 46502(a));

(v) Interference with flight crew members or flight attendants (49 U.S.C. 46504);

(vi) Commission of certain crimes aboard aircraft in flight (49 U.S.C. 46506);

(vii) Carrying a weapon or explosive aboard aircraft (49 U.S.C. 46505);

(viii) Conveying false information and threats (49 U.S.C. 46507);

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States (49 U.S.C. 46502(b));

(x) Lighting violations involving transportation of controlled substances (49 U.S.C. 46315);

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements (49 U.S.C. 46314);

(xii) Destruction of an aircraft or aircraft facility (18 U.S.C. 32);

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping or hostage taking;

(xviii) Treason;

(xix) Rape or aggravated sexual abuse;

(xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;

(xxi) Extortion;
(xxii) Armed or felony unarmed robbery;
(xxiii) Distribution of, or intent to distribute, a controlled substance;
(xxiv) Felony arson;
(xxv) Felony involving:
(A) A threat;
(B) Willful destruction of property;
(C) Importation or manufacture of a controlled substance;
(D) Burglary;
(E) Theft;
(F) Dishonesty, fraud, or misrepresentation;
(G) Possession or distribution of stolen property;
(H) Aggravated assault;
(I) Bribery; or
(J) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than one year;
(xxvi) Violence at an airport serving international civil aviation (18 U.S.C. 37);
(xxvii) Embezzlement;
(xxviii) Perjury;
(xxix) Robbery;
(xxx) Crimes associated with terrorist activities;
(xxxi) Sabotage;
(xxxii) Assault with a deadly weapon;
(xxxiii) Illegal use or possession of firearms or explosives;
(xxxiv) Any violation of a U.S. immigration law;
(xxxv) Any violation of a Customs law or any other law administered or enforced by Customs involving narcotics or controlled substances, commercial fraud, currency or financial transactions, smuggling, failure to report, or failure to declare;
(xxxvi) Airport security violations; or
(xxxvii) Conspiracy or attempt to commit any of the offenses or acts referred to in paragraphs (a)(4)(i) through (a)(4)(xxxv) of this section;
(5) Denial or suspension of the applicant's unescorted access authority to a Security Identification Display Area (SIDA) pursuant to regulations promulgated by the U.S. Federal Aviation Administration or other appropriate government agency; or
(6) Inability of the applicant's employer or Customs to complete a meaningful background check or investigation of the applicant.
* * * * *

(c) * * * The port director will render his decision on the appeal to the applicant in writing within 30 calendar days of receipt of the notice of appeal and, if the application is denied on appeal, the decision will advise the applicant of the procedures for filing a further appeal pursuant to paragraph (d) of this section.

(d) *Further appeal of denial.* Where the application on appeal is denied by the port director, the applicant may file a further written notice of appeal with the director of field operations at the Customs Management Center having jurisdiction over the office of the port director within 10 calendar days of receipt of the port director's decision on the appeal. The further notice of appeal must be filed in duplicate and must set forth the response of the applicant to the decision of the port director. The director of field operations will review the appeal and render a written decision. The final decision will be transmitted to the port director and served by him on the applicant.

5. Section 122.184 is revised to read as follows:

§ 122.184 Change of identification; change in circumstances of employee; additional employer responsibilities.

(a) *Change of identification.* The Customs access seal may be removed from the employee by the port director where, for security reasons, a change in the nature of the identification card or other medium on which it appears is necessary.

(b) *Change in circumstances of employee.* If, after issuance of a Customs access seal to an employee, any circumstance arises (for example, an arrest or 36 conviction for a disqualifying offense) that constitutes a ground for denial of access to the Customs security area under § 122.183(a) or for revocation or suspension of access to the Customs security area and surrender of the Customs access seal under § 122.187(a), the employee must within 24 hours advise the port director in writing of that change in circumstance. In the case of an arrest or prosecution for a disqualifying offense listed in § 122.183(a)(4), the employee also must within 5 calendar days advise the port director in writing of the final disposition of that arrest or prosecution. In addition, if an airport operator or an aircraft operator suspends an employee's unescorted access authority to a Security Identification Display Area pursuant to regulations promulgated by the U.S. Federal Aviation Administration or other appropriate government agency and the employee also has an approved Customs access seal, the employee must within 24 hours advise the port director in writing of the fact of, and basis for, the suspension.

(c) *Additional employer responsibilities.* If an employer becomes aware of any change in the circumstances of its employee as described in paragraph (b) of this section, the employer must immediately advise the port director of that fact even though the employee may have separately reported that fact to the port director under paragraph (b) of this section. In addition, each employer must submit to the port director during the first month of each calendar quarter a report setting forth a current list of all its employees who have an approved Customs access seal. The quarterly report must list separately all additions to, and deletions from, the previous quarterly report. Moreover, each employer must take appropriate steps to ensure that an employee uses an approved Customs access seal only in connection with activities relating to his employment.

6. Section 122.185 is revised to read as follows:

§ 122.185 Report of loss or theft of Customs access seal.

The loss or theft of an approved Customs access seal must be promptly reported in writing by the employee to the port director. The Customs access seal may be replaced, as provided in § 122.182(f).

7. Section 122.186 is revised to read as follows:

§ 122.186 Presentation of Customs access seal by other person.

If an approved Customs access seal is presented by a person other than the one to whom it was issued, the Customs access seal will be removed and destroyed. An approved Customs access seal may be removed from an employee by any Customs officer designated by the port director.

8. Section 122.187 is revised to read as follows:

§ 122.187 Revocation or suspension of access.

(a) *Grounds for revocation or suspension of access*—(1) *General.* The port director:

(i) Must immediately revoke or suspend an employee's access to the Customs security area and demand the immediate surrender of the employee's approved Customs access seal for any ground specified in paragraph (a)(2) of this section; or

(ii) May propose the revocation or suspension of an employee's access to the Customs security area and the surrender of the employee's approved Customs access seal whenever, in the judgment of the port director, it appears for any ground not specified in paragraph (a)(2) of this section that continued access might pose an

unacceptable risk to public health, interest or safety, national security, aviation safety, the revenue, or the security of the area. In this case the port director will provide the employee with an opportunity to respond to the notice of proposed action.

(2) *Specific grounds.* Access to the Customs security area will be revoked or suspended, and surrender of an approved Customs access seal will be demanded, in any of the following circumstances:

(i) There is probable cause to believe that an approved Customs access seal was obtained through fraud, a material omission, or the misstatement of a material fact;

(ii) The employee is or has been convicted of, or found not guilty of by reason of insanity, or there is probable cause to believe that the employee has committed any act or omission involving, an offense listed in § 122.183(a)(4);

(iii) The employee has been arrested for, or charged with, an offense listed in § 122.183(a)(4) and prosecution or other disposition of the arrest or charge is pending;

(iv) The employee has engaged in any other conduct that would constitute a ground for denial of access to the Customs security area under § 122.183;

(v) The employee permits the approved Customs access seal to be used by any other person or refuses to openly display or produce it upon the proper demand of a Customs officer;

(vi) The employee uses the approved Customs access seal in connection with a matter not related to his employment or not constituting a duty described in the written justification required by § 122.182(c)(1);

(vii) The employee refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation;

(viii) For all employees of the bond holder, if the bond required by § 122.182(c) is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time;

(ix) The employee no longer requires access to the Customs security area for an extended period of time at the airport of issuance because of a change in duties, termination of employment, or other reason; or

(x) The employee or employer fails to provide the notification of a change in circumstances as required under § 122.184(b) or (c) or the employee fails to report the loss or theft of a Customs access seal as required under § 122.185.

(b) *Notice of revocation or* suspension. The port director will revoke or suspend access to the Customs security area and demand surrender of the Customs access seal by giving notice of the revocation or suspension and demand in writing to the 40 employee, with a copy of the notice to the employer. The notice will indicate whether the revocation or suspension is effective immediately or is proposed.

(1) *Immediate revocation or suspension.* When the revocation or suspension of access and the surrender of the Customs access seal are effective immediately, the port director will issue a final notice of revocation or suspension. The port director or his designee may deny physical access to the Customs security area and may demand surrender of an approved Customs access seal at any time on an emergency basis prior to issuance of a final notice of revocation or suspension whenever in the judgment of the port director or his designee an emergency situation involving public health, safety, or security is involved and, in such a case, a final notice of revocation or suspension will be issued to the affected employee within 10 calendar days of the emergency action. A final notice of revocation or suspension will state the specific grounds for the immediate revocation or suspension, direct the employee to immediately surrender the Customs access seal if that Customs access seal has not already been surrendered, and advise the employee that he may choose to pursue one of the following two options:

(i) Submit a new application for an approved Customs access seal, in accordance with the provisions of § 122.182(c), on or after the 180th calendar day following the date of the final notice of revocation or suspension; or

(ii) File a written administrative appeal of the final notice of revocation or suspension with the port director in accordance with paragraph (c) of this section within 30 calendar days of the date of the final notice of revocation or suspension. The appeal may request that a hearing be held in accordance with paragraph (d) of this section, and in that case the appeal also must demonstrate that there is a genuine issue of fact that is material to the revocation or suspension action.

(2) *Proposed revocation or suspension*—(i) *Issuance of notice.* When the revocation or suspension of access and the surrender of the Customs access seal is proposed, the port director will issue a notice of proposed revocation or suspension. The notice of proposed revocation or suspension will state the specific grounds for the proposed action, inform the employee that he may continue to have access to the Customs security area and may retain the Customs access seal pending issuance of a final notice under paragraph (b)(2)(ii) of this section, and advise the employee that he may file with the port director a written response addressing the grounds for the proposed action within 10 calendar days of the date the notice of proposed action was received by the employee. The employee may respond by accepting responsibility, explaining extenuating circumstances, and/or providing rebuttal evidence. The employee also may ask for a meeting with the port director or his designee to discuss the proposed action.

(ii) *Final notice*—(A) *Based on nonresponse.* If the employee does not respond to the notice of proposed action, the port director will issue a final notice of revocation or suspension within 30 calendar days of the date the notice of proposed action was received by the employee. The final notice of revocation or suspension will state the specific grounds for the revocation or suspension, direct the employee to immediately surrender the Customs access seal, and advise the employee that he may 42 choose to pursue one of the two options specified in paragraphs (b)(1)(i) and (ii) of this section.

(B) *Based on response.* If the employee files a timely response, the port director will issue a final determination regarding the status of the employee's right of access to the Customs security area within 30 calendar days of the date the employee's response was received by the port director. If this final determination is adverse to the employee, then the final notice of revocation or suspension will state the specific grounds for the revocation or suspension, direct the employee to immediately surrender the Customs access seal, and advise the employee that he may choose to pursue one of the two options specified in paragraphs (b)(1)(i) and (ii) of this section.

(c) *Appeal procedures*—(1) *Filing of appeal.* The employee may file a written appeal of the final notice of revocation or suspension with the port director within 10 calendar days following receipt of the final notice of revocation or suspension. The appeal must be filed in duplicate and must set forth the response of the employee to the statement of the port director. The port director may, in his discretion, allow the employee additional time to submit documentation or other information in support of the appeal.

(2) *Action by port director*—(i) *If a hearing is requested.* If the appeal requests that a hearing be held, the port director will first review the appeal to determine whether there is a genuine issue of fact that is material to the revocation or suspension action. If a hearing is required because the port director finds that there is a genuine 43 issue of fact that is material to the revocation or suspension action, a hearing will be held, and a decision on the appeal will be rendered, in accordance with paragraphs (d) through (f) of this section. If the port director finds that there is no genuine issue of fact that is material to the revocation or suspension action, no hearing will be held and the port director will forward the administrative record as provided in paragraph (c)(2)(ii) of this section for the rendering of a decision on the appeal under paragraph (c)(3) of this section.

(ii) *CMC review.* If no hearing is requested or if the port director finds that a requested hearing is not required, following receipt of the appeal the port director will forward the administrative record to the director of field operations at the Customs Management Center having jurisdiction over the office of the port director for a decision on the appeal. The transmittal of the port director must include a response to any disputed issues raised in the appeal.

(3) *Action by the director.* Following receipt of the administrative record from the port director, the director of field operations will render a written decision on the appeal based on the record forwarded by the port director. The decision will be rendered within 30 calendar days of receipt of the record and will be transmitted to the port director and served by the port director on the employee. A decision on an appeal rendered under this paragraph will constitute the final administrative action on the matter.

(d) *Hearing.* A hearing will be conducted in connection with an appeal of a final notice of revocation or suspension of access to the Customs security area only if the 44 affected employee in writing requests a hearing and demonstrates that there is a genuine issue of fact that is material to the revocation or suspension action. If a hearing is required, it must be held before a hearing officer designated by the Commissioner, or his designee. The employee will be notified of the time and place of the hearing at least 5 calendar days before the hearing. The employee may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in the proceeding, including substantiation of charges and the answer to the charges, must be presented. Both parties will have the right of cross'examination. A stenographic record of the proceedings will be made upon request and a copy furnished to the employee. At the conclusion of the proceedings or review of a written appeal, the hearing officer must promptly transmit all papers and the stenographic record to the director of field operations, together with the recommendation for final action. If neither the employee nor his attorney appears for a scheduled hearing, the hearing officer must record that fact, accept any appropriate testimony, and conclude the hearing. The hearing officer must promptly transmit all papers, together with his recommendations, to the director of field operations.

(e) *Additional written views.* Within 10 calendar days after delivery of a copy of the stenographic record of the hearing to the director of field operations, either party may submit to the director of field operations additional written views and arguments on matters in the record. A copy of any submission will be provided to the other party. Within 10 calendar days of receipt of the copy of the submission, the other party may file a reply with the director of field operations, and a copy of the reply will be provided to the other party. No further submissions will be accepted.

(f) *Decision.* After consideration of the recommendation of the hearing officer and any additional written submissions and replies made under paragraph (e) of this section, the director of field operations will render a written decision. The decision will be transmitted to the port director and served by the port director on the employee. A decision on an appeal rendered under this paragraph will constitute the final administrative action on the matter.

9. In § 122.188:

a. The section heading is amended by removing the word ''identification'' and adding, in its place, the words ''Customs access seal'';

b. Paragraph (a) is amended by removing the words ''identification card, strip, or seal'' in two places in the first sentence and adding, in their place, the words ''Customs access seal'' and by removing the words ''identification card'' in the last sentence and adding, in their place, the words ''Customs access seal'';

c. Paragraph (b) is amended by removing the words ''identification card, strip, or seal'' wherever they appear and adding, in their place, the words ''Customs access seal'';

d. Paragraph (c) is amended by removing the words ''identification card, strip, or seal'' in the second and third sentences and adding, in their place, the words ''Customs access seal'' and by removing the words ''identification cards, strips, or seals'' in the last sentence and adding, in their place, the words ''Customs access seal''; and

e. Paragraph (d) is amended by removing the words ''identification card, strip, or seal'' wherever they appear and adding, in their place, the words ''Customs access seal''.

10. New § 122.189 is added to read as follows:

§ 122.189 Bond liability.

Any failure on the part of a principal to comply with the conditions of the bond required under § 122.182(c), including a failure of an employer to comply with any requirement applicable to the employer under this subpart, will constitute a breach of the bond and may result in a claim for liquidated damages under the bond.

Robert C. Bonner,

Commissioner of Customs.

Approved: July 24, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–19055 Filed 7–26–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–063]

Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Detroit Zone during August 2002. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Detroit Zone.

DATES: The safety zone for the Maritime Day Fireworks, occurring in Marine City, MI, will be enforced from 9:30 p.m. until 11 p.m. on August 10, 2002. The safety zone for the Venetian

Festival Boat Parade & Fireworks, occurring in St. Clair Shores, MI, will be enforced from 8:30 p.m. until 10:30 p.m. on August 10, 2002.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, at (313) 568–9580.

SUPPLEMENTARY INFORMATION: The Coast Guard is implementing the permanent safety zones in 33 CFR 165.907(a)(22) and (23), for fireworks displays in the Captain of the Port Detroit Zone during August 2002.

The following safety zones will be enforced during fireworks displays occurring in the month of August 2002:

Maritime Day Fireworks, Marine City, MI. This safety zone will be enforced on August 10, 2002 from 9:30 p.m. until 11 p.m.

Venetian Festival Boat Parade & Fireworks, St. Clair Shores, MI. This safety zone will be enforced on August 10, 2002, from 8:30 p.m. until 10:30 p.m.

In order to ensure the safety of spectators and transiting vessels, these safety zones will be enforced for the duration of the events. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Detroit to transit the safety zone. Approval will be made on a case-by case basis. Requests must be made in advance and approved by the Captain of Port Detroit before transits will be authorized. The Captain of the Port Detroit may be contacted via U.S. Coast Guard Group Detroit on Channel 16, VHF–FM.

Dated: July 19, 2002.

P. G. Gerrity,

Commander, Coast Guard, Captain of the Port Detroit.

[FR Doc. 02–19138 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 01–278; FCC 02–211]

Radar Detectors

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document requires radar detectors to comply with limits on radiated emissions in the 11.7–12.2 GHz band to prevent interference to satellite services. Radar detectors are required to be approved by the Federal Communications Commission or another designated organization before they can be marketed within the United States.

DATES: Effective August 28, 2002. See § 15.37(k) for Applicability Dates.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *First Report and Order,* ET Docket No. 01–278, FCC 02–211, adopted July 12, 2002, and released July 19, 2002. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of the First Report and Order

1. By this action, the Commission is requiring that radar detectors comply with radiated emission limits in the 11.7–12.2 GHz band under part 15 of the rules, and that all radar detectors be certified to demonstrate compliance with the emission limits before they can be marketed. The requirements will become effective thirty days from the publication of the rules in the **Federal Register** for radar detectors being manufactured and imported, and sixty days after publication of the rules in the **Federal Register** for radar detectors being marketed. This action will significantly reduce interference from radar detectors to very small aperture satellite terminals (VSATs.)

2. Most receivers contain one or more oscillators that generate radio frequency signals intended to be used internally within the device in tuning the received signal. These generated signals can radiate from the receiver and have the potential to interfere with other nearby receivers. For this reason, part 15 of the Commission's rules requires certain receivers to meet the radiated emission limits for ''unintentional radiators'' to minimize the possibility of interference. The current rules require only receivers that tune in the range of 30–960 MHz and Citizen's Band receivers to comply with these limits. Other receivers are not required to comply with the limits, but the rules require that any receiver that causes interference must cease operation. When these requirements were established, most consumer receivers tuned only below 960 MHz. Because there was less probability of receivers that tune above 960 MHz causing interference, the rules did not require such receivers to meet emission limits or to receive an equipment authorization. The emission limit that applies to unintentional radiators other than receivers at frequencies above 960 MHz is a field strength limit of 500 μV/m measured at a distance of 3 meters.

3. Radar detectors that warn of the presence of police speed-measuring radars are currently exempt from complying with the part 15 emission limits because they are receivers that tune only above 960 MHz. They are designed to monitor for the presence of police radar in several frequency bands, including the 10.50–10.55 GHz, 24.05–24.25 GHz and 33.4–36.0 GHz bands. Radar detectors contain a tuning oscillator that operates above the 10.50–10.55 GHz band. In older models this oscillator generally operated on frequencies below the 11.7–12.2 GHz VSAT downlink band, and we have not received complaints of interference to VSATs from such models. However, the potential for radar detectors to interfere with VSATs has recently increased because radar detector manufacturers have begun using oscillators at higher frequencies that place swept frequency emissions within the VSAT downlink band. The purpose of these changes was to enhance detection of police radar while making it more difficult for police to detect the presence of radar detectors in vehicles.

4. On October 15, 2001, the Commission adopted a *Notice of Proposed Rule Making and Order* (''NPRM'') 66 FR 59209, November 27, 2001, that proposed to make a number of changes to part 15 and other parts of the rules. The *NPRM* sought comment on whether there is a need to require radar detectors to comply with radiated emission limits to minimize the possibility of interference to authorized services including VSAT operations, and if so, the appropriate limits that should be applied. The *NPRM* also sought comments on whether there are other receivers that tune above 960 MHz that should be required to comply with emission limits, and if so, the appropriate limits and frequency bands where they should apply. Further, the *NPRM* sought comment concerning the timeframe for affected receivers that should be required to comply with any new emission limits.

5. We have found that radar detectors being marketed emit high level radio signals that can cause interference to VSATs. Accordingly, we conclude that

there is a need for limits on the radiated emissions from radar detectors to protect VSATs from interference. Tests on several radar detectors at the Commission's laboratory found emission levels ranging from 33,000 μV/m to 231,000 μV/m at 3 meters within the VSAT band. The information in the record in this proceeding claims that some radar detector emissions exceed 100,000 μV/m at 3 meters in the VSAT band, which is consistent with our measurements. These levels are far greater than the satellite receive signal levels in the 11.7–12.2 GHz band. These levels are also greater than the levels part 15 permits for some transmitters operating in Industrial, Scientific and Medical (ISM) bands, and are over 200 times greater than the part 15 limit for spurious emissions above 960 MHz. Such levels have a high potential for causing interference to satellite operations, and the information in the record does in fact document many instances of harmful interference caused by radar detectors to satellite operations. VSATs use relatively small receive antenna dishes, on the order of one to two meters, which are less directional and less able to reject signals outside the main receive axis than larger antenna dishes. Also, VSATs are commonly used by small businesses such as stores and gas stations, so they are typically located close to the ground and in close proximity to automobiles. For these reasons, they can not tolerate the levels of interfering signals being emitted by radar detectors.

6. Part 15 requires the operator of an unlicensed device (in this case, the user of a radar detector) to cease operation in the event the device causes harmful interference, even if that device is not subject to specific emission limits. However, identifying each individual source of interference from radar detectors is not practical for a satellite operator because these devices are mobile and therefore interfere intermittently. Further, these interference sources are not under the control of the satellite operator, so in most cases it is not possible for the satellite operator to remedy the interference even if the source could be identified. Under Section 302 of the Communications Act, the Commission has authority to make reasonable regulations governing the interference potential of devices which in their operation are capable of emitting radio frequency radiation in sufficient degree to cause harmful interference to radio communications, and to require devices marketed to comply with these regulations. We conclude that the only reasonable solution to this interference situation is to require radar detectors to comply with emission limits before they are marketed.

7. We will define a radar detector as a receiver designed to signal the presence of radio signals used for determining the speed of motor vehicles because that is the type of device that has caused interference to VSATs and this definition best covers the general range of these products. We do not intend for this definition to encompass the receiver incorporated within a radar transceiver certified under the Commission's rules such as a police radar gun or an anti-collision radar because those devices have not been a source of interference to VSATs.

8. We will require radar detectors to comply with the same limit in the 11.7–12.2 GHz VSAT band that applies to other unintentional radiators operating under part 15 of the rules. This limit is 500 μV/m measured at a distance of 3 meters, and is based on the use of measurement equipment with a 1 MHz measurement bandwidth and an average detector function. As with other part 15 devices, the emission levels measured with a peak detector function may not exceed the average limit by more than 20 dB. This emission limit has a long and successful history of controlling interference to authorized services and will protect VSATs from harmful interference caused by radar detectors in virtually all cases. In those rare cases where radar detector emissions at that level cause harmful interference, the non-interference requirement of § 15.5 will continue to apply. We are applying emission limits in only the VSAT downlink band because the only complaints of interference that we have received are to VSAT receivers in the 11.7–12.2 GHz band. We expect that adopting these limits will result in manufacturers changing receiver local oscillators to frequencies outside this band, so as a practical matter only spurious emissions will fall within the VSAT downlink band. These emissions will typically be far below the emission limit we are adopting and are unlikely to result in harmful interference to VSATs.

9. As stated in part 15 of the rules, we expect manufacturers to use good engineering practice in the design of their equipment and suppress emissions as much as practicable. We will consider modifying the emission limits we are adopting for radar detectors if a need is shown for such changes, such as if interference to VSAT operations or other authorized services occurs. We are also willing to consider, in future proceedings, limiting radar detector primary oscillators to particular frequencies, should that prove necessary to avoid harmful interference.

10. Because many radar detectors being marketed today emit high level signals that can cause interference to VSATs, we conclude that the public interest is best served by requiring that all radar detectors marketed within the United States meet the new emission limits quickly. Accordingly, we are requiring that all radar detectors marketed beginning sixty days after publication of this decision and the associated rules in the **Federal Register** must comply with the new rules. This plan will provide a reasonable amount of time for manufacturers, wholesalers and retailers to be notified of the rule changes so they can cease marketing non-compliant units. Furthermore, we are requiring that radar detectors imported into the United States or manufactured in this country for use within this country comply with the new rules beginning thirty days after publication of this decision and the associated rules in the **Federal Register**. In requiring that manufacturing and importation of radar detectors meet the new requirements before the marketing cut-off date, we are providing manufacturers time to introduce compliant models before the sixty-day marketing cutoff. This will also prevent the manufacture or importation of large numbers of non-compliant devices prior to the marketing cutoff date. The new rules will apply only to devices being imported, manufactured and marketed after the specified effective dates. We are not adopting specific rules concerning devices already sold, but such devices will continue to be subject to the non-interference requirement in § 15.5 of the rules.

11. We will require that radar detectors be authorized under our certification procedure because they have been found to emit spurious RF energy at levels that can cause harmful interference to authorized radio services. The certification procedure provides a higher level of oversight of equipment compliance prior to marketing than either the Declaration of Conformity (DoC) or the verification self-approval procedures. As we noted previously, equipment with the potential to create significant interference to communication services requires a higher level of oversight than manufacturer's self-approval. In view of the fact that the new rules we are establishing for radar detectors are clear and the testing methods used to determine compliance with the rules are straightforward, we will permit Telecommunication Certification Bodies

(TCBs) to certify them. Allowing TCBs to certify radar detectors will permit manufacturers to obtain an equipment approval in an expeditious manner because manufacturers will have more than one approval body to choose from. The tests that will be required for radar detectors are field strength measurements over a single frequency band, which TCBs accredited to make radiated measurements above 1 GHz are already capable of performing. The staff of the Office of Engineering and Technology will work with TCBs to promptly address any implementation issues which may arise.

12. We recognize that requiring radar detectors to be certified within thirty days after publication of the new rules in the **Federal Register** may pose some logistical problems for manufacturers. Many radar detectors may already comply with the new emission limits and could thus be certified quickly. However, because many of these units may already be in transit from the manufacturer to wholesalers and retailers, it would be difficult for manufacturers to bring these devices into compliance with the administrative requirements for certified devices within this timeframe. Specifically, all equipment authorized under the certification procedure is required to be labeled with an FCC identification number. In addition, part 15 requires a warning label stating that the device may not cause harmful interference and must accept any interference received, and requires the user's manual to contain a statement that unauthorized changes or modifications could void the user's authority to operate the equipment. It is unlikely that manufacturers could comply with these administrative requirements within thirty days because the time needed to make changes on the assembly line and ship products would generally be greater than thirty days. We believe that the rules' intention to notify customers can be satisfied by other means without causing delays to manufacturers. We will therefore permit radar detectors manufactured or imported within 180 days of the publication of the new rules in the **Federal Register** to be labeled with the FCC identification number and part 15 warning statement on the individual equipment carton rather than on the device itself, so long as certification has been obtained for those units. In addition, we will not require the statement about unauthorized changes to be placed in the user's manual during this time period. This approach will eliminate the need for manufacturers to cease manufacturing and importing equipment to implement the new labeling requirements, and will provide a practical means to label products that comply with the technical requirements but that were produced without labels.

13. Radar detector manufacturers have offered to provide the Commission with lists of radar detector serial numbers to assist in identifying products manufactured before and after the date on which equipment authorization is required. We believe that such lists could assist us in determining whether radar detectors being marketed were legally manufactured and imported. Accordingly, we will require all parties that manufacture or import radar detectors as of the manufacturing and importation cutoff date we are adopting to supply such lists. The Office of Engineering and Technology will issue a public notice that will ask parties to supply this information once the necessary Office of Management and Budget (OMB) approval to collect this information has been obtained.

14. We disagree with comments that a Further Notice of Proposed Rule Making is needed before we can adopt emission limits for radar detectors because the *NPRM* did not propose specific regulations. Under the Administrative Procedure Act, it is not necessary for the *NPRM* to propose specific regulations. Rather, it must include either the terms or substance of the proposed rules, or a description of the subjects and issues involved. The *NPRM* clearly described the subject and issues involved, which is that we were considering adopting emission limits for radar detectors, and sought comment on the appropriate limits. The large number of comments received from both the satellite industry and the radar detector industry show that parties had adequate notice of potential rule changes, so a Further Notice of Proposed Rule Making is unnecessary.

15. We decline to adopt emission limits for other receivers operating above 960 MHz. There is not sufficient information in the record in this proceeding to justify emission limits for receivers above 960 MHz other than radar detectors. We are adopting emission limits for radar detectors because they have been found to emit high level signals that can cause interference to VSATs. No information was provided to show that similar circumstances exist with other receivers operating above 960 MHz. Therefore, we find that requiring other receivers operating above 960 MHz to comply with emission limits is not necessary at this time. This does not preclude our ability to impose such limits in the future if the need becomes apparent.

Final Regulatory Flexibility Analysis

16. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making,* Review of Part 15 and other Parts of the Commission's Rules (NPRM).[2] The Commission sought written public comments on the proposals in the Notice, including comment on the IRFA.[3] This present analysis conforms to the RFA.[4]

A. Need for, and Objectives of, the First Report and Order

17. Section 11 of the Communications Act of 1934, as amended, and Section 202(h) of the Telecommunications Act of 1996 require the Commission (1) to review biennially its regulations pertaining to telecommunications service providers and broadcast ownership; and (2) to determine whether economic competition has made those regulations no longer necessary in the public interest. The Commission is directed to modify or repeal any such regulations that it finds are no longer in the public interest.

18. As part of the biennial review for the year 2000, the Commission reviewed its regulations pertaining to telecommunications service providers and broadcast ownership and recommended a number of changes to those rules. While not specifically required by statute, the Commission also reviewed parts 2, 15 and 18 of the Commission's Rules as part of this process.[5]

19. The First Report and Order requires radar detectors, which have been currently exempt from complying with emission limits, to meet the part 15 limits in the 11.7–12.2 GHz band to avoid causing interference to satellite services.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

20. Comments on the IRFA were received from radar detector manufacturers, who state they are small entities. RADAR Members, a trade

[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] See Notice of Proposed Rule Making and Order in ET Docket No. 01–278, 66 FR 59209 (November 27, 2001).

[3] See id.

[4] See generally 5 U.S.C. 604.

[5] See 47 CFR parts 2, 15, 18.

association, argues that the adoption of limits across a wide band of spectrum would eliminate radar detectors from the consumer market, and that some companies would be unable to survive in the face of such a regulation. It states that as an alternative, manufacturers will voluntarily reduce emission in the 11.7–12.2 GHz band where interference to satellite operations was actually reported. Cobra Electronics Corporation states that it is a small entity that deserves consideration under the Regulatory Flexibility Act. It states that redesigning its product line, especially considering the very real possibility that doing so would eliminate the market for this product, obviously would be detrimental to small businesses such as Cobra. It further states that there is evidence that the industry is already addressing the satellite interference complaints.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

21. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[6] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[7] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[8] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[9]

22. Our present action will affect some manufacturers of radio frequency equipment (RF manufacturers). The U.S. Small Business Administration (SBA) has designated a small business size standard for entities engaged in Radio and Television Broadcasting or Wireless Communications Equipment Manufacturing.[10] According to SBA, such a manufacturer must have 750 or fewer employees in order to qualify as a small business.[11] According to Census Bureau data from 1992, there were 858 such firms in the United States, and 778 had 750 or fewer employees.[12]

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. The First Report and Order requires radar detectors used on vehicles to meet the part 15 emission limits in the 11.7–12.2 GHz band to prevent interference to satellite services. It requires that radar detectors be certified to show that they comply with these requirements before they can be imported or marketed. Certification requires the manufacturer to have the equipment tested for compliance with the rules, and then file an application with the test data and information on the product with the Commission or a designated Telecommunication Certification Body (TCB). The manufacturer must wait until the application is granted before the equipment can be imported or marketed. Equipment that is certified must also be labeled with an FCC identification number and warning label stating that operation of the equipment must cease in the event it causes harmful interference to authorized radio services.

24. As a result of the rule change, some manufacturers will be required to redesign radar detectors to reduce emissions in the 11.7–12.2 GHz band. This could be accomplished by a change in the internal oscillator frequencies. Radar detector manufacturers state that 73 percent of units currently marketed can meet the emission limits in the 11.7–12.2 GHz band, and that the remainder will meet the limit by January 2003.

25. Because many radar detectors being marketed today emit high level signals that can cause interference to VSATs, the First Report and Order requires that all radar detectors marketed within the United States meet the new emission limits beginning sixty days after publication of this decision and the associated rules in the **Federal Register** must comply with the new rules. This plan will provide a reasonable amount of time for manufacturers, wholesalers and retailers to be notified of the rule changes so they can cease marketing non-compliant units. The First Report and Order also requires that radar detectors imported into the United States or manufactured within this country comply with the new rules beginning thirty days after publication of this decision and the associated rules in the **Federal Register**. This will provide manufacturers time to introduce compliant models before the sixty-day marketing cutoff. This will also avoid the manufacture or importation of large numbers of non-compliant devices prior to the marketing cutoff date. Manufacturers will be permitted to label radar detectors on the individual carton, rather than on the device itself, for a period of 180 days. In addition, manufacturers will not be required to place a statement about ''unauthorized changes'' in the instruction manuals until after this time period. These new rules will apply only to devices being imported, manufactured and marketed after the specified effective dates.

26. We are also requiring a one-time filing of radar detector serial numbers to aid in our enforcement of the new rules.[13]

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

27. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[14]

28. The First Report and Order requires emission limits on radar detectors, which will have an impact on small equipment manufacturers. We find that emission limits on radar detectors are necessary because manufacturers have been building them without any suppression on radiated emissions, and the radiated signals have been found to cause interference to satellite radio services. Because interference has been reported only in the 11.7–12.2 GHz satellite band, and in light of comments filed by small

[6] 5 U.S.C. 604.

[7] 5 U.S.C. 601(6).

[8] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[9] Small Business Act, 15 U.S.C. 632 (1996).

[10] See 13 CFR 121.201, North American Industrial Classification System (NAICS) code 334220.

[11] Id.

[12] See U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995). These data have been updated for year 1997, but without the small business breakout. See Summary, Economic Census, Subject Series: Manufacturing at 1–19 (issued June 2001). By 1997, the census total for firms in this category had increased to 1,096. Id.

[13] See ¶ 13, supra.

[14] *See* 5 U.S.C. 603(c).

businesses in this proceeding, we are requiring radiated emission limits in only the one band. This will minimize the impact on small manufacturers, because emission limits applied across a wide band would require significant redesign of the equipment, which would substantially increase its cost.

29. The effective dates for our actions are necessary for an orderly transition to compliance. Alternative time frames might assist small businesses to comply, yet would be inconsistent with the goal of reducing interfering equipment. Because many radar detectors may already comply with the new emission limits, the requirement to obtain certification within 30 days is not expected to have a significant impact on manufacturers. The impact on small manufacturers will be further reduced by allowing labeling to appear on the individual equipment carton rather than the device for a period of 180 days, because that will permit manufacturers to obtain certification for, and label equipment already in shipment.

30. Finally, we are requiring a one-time filing of serial numbers to aid in our enforcement efforts, and believe that this is a minimal compliance burden.

31. Report to Congress: The Commission will send a copy of the *First Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *First Report and Order,* including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *First Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

32. Pursuant to the authority contained in Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 USC Sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304, and 307, part 15 of the Commission's Rules is amended.

33. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

34. When requested by Public Notice, all parties that manufactured or imported radar detectors as of August 28, 2002 of these rules shall supply a list of radar detector models and information on their serial numbers which permits identification of their manufacturing date to the Office of Engineering and Technology. This requirement is subject to OMB review and approval and will become effective after such approval is obtained.

List of subjects in 47 CFR Part 15

Communications equipment, Labeling, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 15 to read as follows:

PART 15—RADIO FREQUENCY DEVICES

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

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336 and 544A.

2. Section 15.3 is amended by adding paragraph (ee) to read as follows:

§ 15.3 Definitions.

* * * * *

(ee) *Radar detector.* A receiver designed to signal the presence of radio signals used for determining the speed of motor vehicles. This definition does not encompass the receiver incorporated within a radar transceiver certified under the Commission's rules.

3. Section 15.37 is amended by adding paragraph (k) to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

* * * * *

(k) Radar detectors manufactured or imported after August 28, 2002 and marketed after September 27, 2002 shall comply with the regulations specified in this part. Radar detectors manufactured or imported prior to January 27, 2003 may be labeled with the information required by §§ 2.925 and 15.19(a) of this chapter on the individual equipment carton rather than on the device, and are exempt from complying with the requirements of § 15.21.

4. Section 15.101, paragraph (a) is amended by adding a new entry to the table following the entry for ''Scanning receiver'' and by revising paragraph (b) to read as follows:

§ 15.101 Equipment authorization of unintentional radiators.

(a) * * *

Type of device	Equipment authorization required
* * * * * * *	
Radar detector	Certification.
* * * * * * *	

(b) Only those receivers that operate (tune) within the frequency range of 30–960 MHz, CB receivers and radar detectors are subject to the authorizations shown in paragraph (a) of this section. However, receivers indicated as being subject to Declaration of Conformity that are contained within a transceiver, the transmitter portion of which is subject to certification, shall be authorized under the verification procedure. Receivers operating above 960 MHz or below 30 MHz, except for radar detectors and CB receivers, are exempt from complying with the technical provisions of this part but are subject to § 15.5.

* * * * *

5. Section 15.109 is amended by adding paragraph (h) to read as follows:

§ 15.109 Radiated emission limits.

* * * * *

(h) Radar detectors shall comply with the emission limits in paragraph (a) of this section over the frequency range of 11.7–12.2 GHz.

[FR Doc. 02–19178 Filed 7–26–02; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 67, No. 145
Monday, July 29, 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 Highway Administration

23 CFR Part 658

[FHWA Docket No. FHWA–2001–10370]

RIN 2125–AE90

Commercial Vehicle Width Exclusive Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is requesting comments on two proposals. The first would increase the distance that width exclusive devices could project from the side of a commercial vehicle from three to four inches. The agency views this proposal as a first step in the process to harmonize size and weight limits where possible in accordance with the provisions of the North American Free Trade Agreement (NAFTA). The second proposal would remove recreational vehicles (RVs) from consideration as a commercial motor vehicle. When recreational vehicles (RVs) are being moved to the point of customer delivery, e.g., from a manufacturing location to a dealer, or between a dealer and a tradeshow, they are currently considered to be commercial vehicles and therefore subject to the 102-inch vehicle width limitation. When a customer takes possession of the RV, however, it becomes personal property and is no longer subject to these regulations, unless the RV is clearly being used in a commercial enterprise. This proposed rule would eliminate the RV from consideration as a commercial vehicle and the subsequent need for overwidth permit for the trip from the manufacturer to the dealer and the dealer to the customer, if add-on customer convenience devices extend beyond the regular width exclusion zone.

DATES: Comments must be received on or before September 27, 2002.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgement page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Forjan, Office of Freight Management and Operations (202) 366–6817, or Mr. Raymond W. Cuprill, Office of the Chief Counsel (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit.* Acceptable formats include: MSWord (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

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Background

This NPRM addresses two separate issues. They will each be discussed individually, as follows: (1) The increased allowance of width measurement, and (2) the removal of recreational vehicles from the definition of a commercial vehicle.

1. Increase of Width Exclusive Distance

Section 411(h) of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97–424, 96 Stat. 2097) gave the Secretary of Transportation (Secretary) authority to exclude from the measurement of vehicle length any safety and energy conservation devices found necessary for the safe and efficient operation of commercial motor vehicles (CMVs). Section 416(b), now 49 U.S.C. 31113(b), authorized similar exclusions when measuring vehicle width. Section 411(h) also provided that no device excluded from length measurement by the Secretary could have, by design or use, the capability to carry cargo. That authority is now codified at 49 U.S.C. 31111(d). The current regulation, 23 CFR 658.16(b)(ii)(B), limits the distance that such devices may extend from the side of a commercial vehicle to three inches.

A notice of proposed rulemaking is being issued today for comments on the potential safety and operational effects of increasing the allowable distance that non-property carrying devices may extend from the side of the vehicle, from three inches to four inches.

In October 1999, the Land Transportation Standards Subcommittee (LTSS), Working Group 2 on Vehicle Weights and Dimensions, created by the North American Free Trade Agreement (NAFTA) in 1994, issued a discussion paper on vehicle performance criteria for vehicles that might be allowed to operate in the three NAFTA countries (Canada, Mexico and the United States). The report, ''Highway Safety Performance Criteria In Support of Vehicle Weight and Dimension Regulations,'' (a copy of which is included with this docket) contained candidate vehicle performance criteria and recommended threshold values. The definition of ''overall width'' proposed for standard use by the three countries as part of the discussion paper included, in part, ''exclusive of devices or appurtenances at the sides of a truck, tractor, semitrailer, or trailer whose

function is related to the safe operation of the vehicle. Such devices may extend no more than 10 centimeters beyond the side of the vehicle.'' Using accepted conversion factors, 10 centimeters equates to 3.937 inches.

The primary objective of Working Group 2 has been, and continues to be, to seek areas within the broad range of vehicle weights and dimensions that can be harmonized among the participating countries. The FHWA, as an active participant in the activities of the LTSS and Working Group 2, is attempting to harmonize size and weight limits where possible. The exclusion of non-property carrying devices, extending up to three inches from the side of a commercial vehicle, is based on agency policy and industry practice that has evolved since the first Federal statute describing maximum vehicle width appeared in 1956. This three-inch limit itself is not statutory, and thus may be subject to administrative change by the agency.

2. Exemption of Recreational Vehicles From Commercial Vehicle Definition

When recreational vehicles (RVs) are being moved to the point of customer delivery, e.g., from a manufacturing location to a dealer, or between a dealer and a tradeshow, they are currently considered to be commercial vehicles (the vehicle itself is the merchandise being transported). Therefore, the 102-inch vehicle width limitation in 23 CFR part 658 is applicable to that movement. When a customer takes possession of the RV, it becomes personal property and is no longer subject to part 658, unless the RV is clearly being used in a commercial enterprise. Therefore, the treatment of additions to the vehicle's width limitations become a matter for State determination.

Recreation Vehicles often include additions that are attached to the sides of the unit for use when parked, or for other designed purposes. When RVs are moving, these devices either fold up or roll up against the unit frame. As long as the devices remained within the 3-inch zone, States have traditionally excluded these devices (as long as they do not carry cargo), even while the unit is in a commercial status.

An increasing number of new RVs, however, are now coming equipped with roll up awnings for use when parked. The RV maufacturers, to add additional stability and strength, are building awnings into the structure of the RVs. These awnings come with the vehicle, rather than being an aftermarket or dealer add-on. However, when rolled up in the traveling position, the roll extends up to 6 inches from the side of the unit. Customarily, the motor carrier would be required to obtain an over-width special permit for an RV moving as a commercial vehicle, if it has an appurtenance extending beyond 3 inches on each side of the vehicle. Again, once a customer takes possession for private, personal use, there is no Federal requirement that States issue over width permits. In recent years, many States have enacted legislation specifically exempting roll-up awnings from any width requirements for personal use vehicles.

In providing comments to a notice of proposed rulemaking on length and width exclusive devices published on August 18, 2000, at 65 FR 50471 (Docket No. FHWA–1997–2234), the Wisconsin DOT, the Recreational Vehicle Industry Association (RVIA), and the U.S. House of Representatives Committee on Transportation and Infrastructure, all commented that this ''one-time'' requirement is not in the public interest. All noted that, for the short time and distance (relative to its eventual use) these units are a commercial vehicle, they should be exempted from any permit requirements. These requirements allegedly add to the transportation (and eventually buyer) cost, and create unnecessary administrative burdens on State permitting offices already stretched thin with increased commercial needs. These commenters proposed amending the definition of ''commercial vehicle'' used in this part. Because such an action was beyond the scope of the length and width exclusive device rulemaking, the FHWA decided to address it in this separate NPRM.

Additionally, the Senate report that accompanied the U.S. DOT Appropriations Act for fiscal year 2002 included language encouraging the FHWA to amend its regulation to include an allowance, with reasonable safety limitations, for the commercial transport of these RVs with appurtenses. (See S. Rep. No. 107–38, at 66). Therefore the FHWA is proposing to amend those sections of the regulations in this part to exclude RVs from the requirements that a carrier obtain a special over-width permit for the limited time the vehicle is considered commercial.

The proposed changes include: (1) An amendment of the definition of commercial vehicle, and (2) the clarification of the language in § 658.15, regarding special use permits for vehicles exceeding 102 inches in width.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

We have determined that this proposed action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal and that there will not be any additional cost incurred by any affected group as a result of this proposal. Therefore, a regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities. The two issues discussed in this proposed rule involve the manner in which States are to treat various vehicles. In each instance what is being proposed would reduce the regulatory requirements with which commercial vehicle drivers must comply. For these reasons, the FHWA certifies that this proposed action would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The proposal to remove RVs from the definition of commercial motor vehicle does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This proposal would simply remove a Federal requirement and return the authority to enforce various requirements to the States.

The proposal to increase the width exclusive device extension distance from 3 to 4 inches on the other hand, could preempt State law or regulation in some States. At present the agency is unable to determine the federalism implications of this proposal. Comments received on this proposal will help the agency determine the need for a federalism summary impact statement, if this proposal proceeds to a final rule. Many States simply enforce the ''Federal rule'' without establishing their own standard. Changing the distance from 3 to 4 inches would

change what is enforced, but would not actually change State law.

These proposals will not affect the State's ability to discharge traditional State government function.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program, Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). What is being proposed in each of the two issues of this proposed rule would reduce the regulatory requirements that commercial vehicle operators must comply with.

Executive Order 12988 (Civil Justice Reform)

This proposal 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.

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

This proposed 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.

National Environmental Policy Act

We have analyzed this proposal for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and have determined that this proposed action would not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposal under Executive Order 13175, dated November 6, 2000, and believes that the proposed action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs in Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that this proposal 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. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned 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. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grants Program—transportation, Highways and roads, Motor carrier—size and weight.

Issued on: July 23, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend 23 CFR part 658 as follows:

PART 658—TRUCK SIZE AND WEIGHT; ROUTE DESIGNATIONS__LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for part 658 continues to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111, 31112, and 31114; 49 CFR 1.48(b)(19) and (c)(19).

2. Amend § 658.5 by revising the term ''commercial motor vehicle'' to read as follows:

§ 658.5 Definitions.

* * * * *

Commercial motor vehicle. For purposes of this regulation, a motor vehicle designed or regularly used for carry freight, merchandise, or more than ten passengers, whether loaded or empty, including buses, but not including vehicles used for vanpools, or vehicles built and operated as recreational vehicles.

* * * * *

3. Revise § 658.15(c) to read as follows:

§ 658.15 Width.

* * * * *

(c) Notwithstanding the provisions of this section or any other provision of law, the following are applicable:

(1) A State may grant special use permits to motor vehicles, including manufactured housing, that exceed 102 inches in width; and

(2) A State may allow recreational vehicles with safety and/or non-cargo carrying appurtenances extending beyond four inches from the side of the vehicle to operate without a special use over-width permit.

4. Revise § 658.16(b)(2)(ii) to read as follows:

§ 658.16 Exclusions from length and width determinations.

* * * * *

(b) * * *

(2) * * *

(ii) That do not extend more than 4 inches beyond each side or the rear of the vehicle or,

* * * * *

5. Amend appendix D to part 658 by revising item number 3 to read as follows:

Appendix D to Part 658—Devices That Are Excluded From Measurement Of the Length or Width of a Commercial Motor Vehicle

* * * * *

3. Devices excluded from width determination, not to exceed 4 inches from the side of the vehicle including, but not limited to, the following:

(a) through (h) * * *

(b) Tarping systems for flatbed semitrailers or trailers described as follows:

Also excluded from length and width measurement are load tarping systems where no component part extends farther than 4 inches from sides or back of the vehicle when the vehicle is in operation. This exclusion applies to component parts of these systems including: a headboard (not intended or designed to meet the front end structure cargo restraint requirements of 49 CFR 393.106) up to 110 inches wide properly centered as part of the installation process so that neither edge extends farther than 4 inches from the structural edge of the vehicle, side rails running the length of the vehicle, rear doors if the only function of the doors is to complete a seal of the cargo and anchor the sliding walls, transition pieces or ''wings'' between a front-end structure designed to meet the requirements of 49 CFR 393.106 (and limited to 102-inches wide), and the movable portion of a tarping system as long as they are not attached to any other property-carrying or supporting part of the flatbed structure, and remain as an add-on piece as opposed to a single piece bulkhead structure designed to accommodate cargo restraint requirements and a tarping system;

(a) through (l) * * *

[FR Doc. 02–19029 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106359–02]

RIN 1545–BA57

Compensatory Stock Options Under Section 482

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance regarding the application of the rules of section 482 governing qualified cost sharing arrangements. These proposed regulations provide guidance regarding the treatment of stock-based compensation for purposes of the rules governing qualified cost sharing arrangements and for purposes of the comparability factors to be considered under the comparable profits method. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 28, 2002. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for November 20, 2002, must be received by October 30, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–106359–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG–106359–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *http://www.irs.gov/regs.* The public hearing will be held in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Douglas Giblen, (202) 874–1490; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by September 27, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information requirements are in proposed §§ 1.482–7(d)(2)(iii)(B) and 1.482–7(j)(2)(i)(F). This information is required by the IRS to monitor compliance with the federal tax rules for determining stock-based compensation costs related to intangible development to be shared among controlled participants in qualified cost sharing arrangements. The likely respondents are taxpayers who enter into these arrangements. Responses to this collection of information are required to determine these taxpayers' proper shares of stock-based compensation costs incurred with respect to these arrangements.

Section 1.482–7(d)(2)(iii)(B) of the proposed regulations provides that controlled participants may elect an alternative method of measurement of certain stock-based compensation by clearly referring to the election in the written cost sharing agreement required under existing regulations or by amending a cost sharing agreement already in effect to refer to the election. Section 1.482–7(j)(2)(i)(F) requires controlled participants to maintain documentation necessary to establish the amount taken into account as operating expenses attributable to stock-based compensation, including the method of measurement and timing used in computing that amount, and the data, as of the date of grant, used to identify stock-based compensation related to the development of intangibles.

Estimated total annual reporting and/or recordkeeping burden: 2,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: The estimated annual burden per respondent varies from 2 hours to 7 hours, depending on individual circumstances, with an estimated average of 4 hours.

Estimated number of respondents and/or recordkeepers: 500.

Estimated frequency of responses: Annually.

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

Section 482 of the Internal Revenue Code generally provides that the Secretary may allocate gross income, deductions and credits between or among two or more taxpayers owned or controlled by the same interests in order to prevent evasion of taxes or clearly to reflect income. On July 8, 1994, Treasury and the IRS published in the **Federal Register** (59 FR 34988) final regulations (T.D. 8552, 1994–2 C.B. 93) under section 482 in areas other than cost sharing. On December 20, 1995, Treasury and the IRS published in the **Federal Register** (60 FR 65553) final cost sharing regulations (T.D. 8632, 1996–1 C.B. 85), effective for taxable years beginning on or after January 1, 1996. Amendments to T.D. 8632 were published in the **Federal Register** on May 13, 1996, at 61 FR 21955 (T.D. 8670, 1996–1 C.B. 99), and on January 3, 2001, at 66 FR 280 (T.D. 8930, 2001–1 I.R.B. 433).

The 1994 final regulations under section 482 contain general provisions at § 1.482–1 describing the arm's length standard and the best method rule. The final cost sharing regulations at § 1.482–7 generally require that controlled participants in a qualified cost sharing arrangement share intangible development costs in proportion to their shares of the reasonably anticipated benefits attributable to the development of the intangibles covered by the arrangement. These proposed regulations clarify that stock-based compensation is taken into account in determining the operating expenses treated as a controlled participant's intangible development costs for purposes of the cost sharing provisions; provide rules for measuring the cost associated with stock-based compensation; clarify that the utilization and treatment of stock-based compensation is appropriately taken into account as a comparability factor for purposes of the comparable profits method under § 1.482–5; and clarify the coordination of the cost sharing rules of § 1.482–7 with the arm's length standard as set forth in § 1.482–1.

Explanation of Provisions

Overview

The Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, 2561 *et seq.* (reprinted at 1986–3 C.B. (Vol. 1) 1, 478) (the Act), amended section 482 to require that consideration for intangible property transferred in a controlled transaction be commensurate with the income attributable to the intangible. The legislative history of the Act indicated that in adding this commensurate with income standard to section 482, Congress did not intend to preclude the use of bona fide research and development cost sharing arrangements as an appropriate method of allocating income attributable to intangibles among related parties, ''if and to the extent such agreements are consistent with the purpose of this provision that the income allocated among the parties reasonably reflect the actual economic activity undertaken by each. Under such a bona fide cost-sharing arrangement, the cost-sharer would be expected to bear its portion of all research and development costs * * *.'' H.R. Rep. No. 99–841, at II–638 (1986) (the Conference Report).

The Conference Report recommended that the IRS conduct a comprehensive study and consider whether the regulations under section 482 (issued in 1968) should be modified in any respect. In response to this directive, on October 18, 1988, Treasury and the IRS issued a study of intercompany pricing (the White Paper), published as Notice 88–123, 1988–2 C.B. 458. With respect to cost sharing arrangements, the White Paper observed that Congress intended such arrangements to produce results consistent with the purposes of the commensurate with income standard in section 482, and in particular that allocations of income among the participants reasonably reflect the participants' respective economic activity. 1988–2 C.B. at 459, 495. The White Paper further observed that Congress intended that Treasury and the IRS apply and interpret the commensurate with income standard consistently with the arm's length standard. 1988–2 C.B. at 458, 477.

Section 1.482–1 of the 1994 final regulations provides that a controlled transaction meets the arm's length standard if the results of the transaction are consistent with the results that would have been realized if uncontrolled taxpayers had engaged in the same transaction under the same circumstances. A method selected under the best method rule is used to determine whether a controlled transaction produces an arm's length result. The regulations reference §§ 1.482–2 through 1.482–6 as providing specific methods to be used in this determination.

Section 1.482–7 of the 1995 final regulations implements the commensurate with income standard in the context of cost sharing arrangements. The final cost sharing regulations require that controlled participants in a qualified cost sharing arrangement share all costs incurred that are related to the development of intangibles in proportion to their shares of the reasonably anticipated benefits attributable to that development. Section 1.482–7(d)(1) defines these intangible development costs as including operating expenses as defined in § 1.482–5(d)(3), other than depreciation or amortization, plus an arm's length rental charge determined under § 1.482–2(c) for the use of any tangible property made available to the qualified cost sharing arrangement. Section 1.482–5(d)(3) defines operating expenses, for purposes of the comparable profits method under section 482, as including all expenses not included in cost of goods sold except for interest expense, foreign and domestic income taxes, and any other expenses not related to the operation of the relevant business activity. In the context of cost sharing, the relevant business activity is the development of intangibles covered by the cost sharing arrangement.

Since the promulgation of the final cost sharing regulations in 1995, the issue has been raised whether operating expenses within the meaning of § 1.482–7(d)(1) include compensation provided by a controlled participant in the form of stock options. Related questions have been posed in this context regarding the interaction between the arm's length standard and the cost sharing regulations.

These proposed regulations amend the final regulations to clarify that stock-based compensation must be taken into account in determining operating expenses under § 1.482–7(d)(1) and to provide rules for measuring stock-based compensation costs. These proposed regulations also clarify that stock-based compensation should be taken into account in comparability determinations pursuant to the comparable profits method under § 1.482–5. Finally, the proposed regulations amend the final regulations to include express provisions to coordinate the cost sharing rules of § 1.482–7 with the arm's length standard as set forth in § 1.482–1.

Inclusion of Stock-Based Compensation in Intangible Development Costs

The proposed regulations provide that in determining a controlled participant's operating expenses within the meaning of § 1.482–7(d)(1), all compensation, including stock-based compensation, must be taken into account. The proposed regulations also provide rules for measuring the operating expenses attributable to stock-based compensation.

The definition of stock-based compensation for purposes of these proposed regulations is broad, comprising any compensation provided by a controlled participant to an employee or independent contractor in the form of equity instruments, stock options, or rights in (or determined by reference to) such instruments or options, regardless of whether the compensation ultimately is settled in the form of cash, stock, or other property. Thus, these proposed regulations are intended to reach such forms of compensation as restricted stock, nonstatutory stock options, statutory stock options (incentive stock options described in section 422(b) and options granted under an employee stock purchase plan described in section 423(b)), stock appreciation rights, and phantom stock. Statutory stock options are within the scope of the definition regardless of whether the employer is entitled to an income tax deduction with respect to those options.

The proposed regulations provide that the determination of whether stock-based compensation is related to the development of intangibles covered by the qualified cost sharing arrangement is to be made as of the date the stock-based compensation is granted. For example, controlled participants must share the costs attributable to stock-based compensation that is granted to an employee who, at the time of grant, is performing research services related to the qualified cost sharing arrangement. Treasury and the IRS believe that this rule appropriately identifies the stock-based compensation to be shared because the grant of compensation generally is the economic event most closely associated in time with the services being compensated. Because a controlled participant may choose whether to provide stock-based or cash compensation, this rule also promotes neutrality of treatment as among various forms of compensation. Finally, because the grant-date identification rule applies irrespective of the method used by the controlled participant to measure or determine the timing of inclusion of stock-based compensation in the intangible development costs to be shared, the rule ensures that the same items of stock-based compensation will be taken into account under any method, thus promoting neutrality in the choice of measurement method afforded by the proposed regulations.

In applying the grant-date identification rule in cases where a stock option is repriced or otherwise modified, the rules of section 424(h) and related regulations will be used to determine whether the grant of a new stock option has occurred.

Treasury and the IRS recognize that tax and other accounting principles permit the cost associated with stock-based compensation to be measured and taken into account as of different points in time and under various methodologies for different purposes. For example, for general income tax purposes, the amount of compensation taxed to an employee and deductible by an employer upon exercise of a stock option not governed by sections 421–424 (commonly referred to as a nonstatutory stock option) generally is measured by the ''spread'' between the option price and the fair market value of the underlying stock at the date of exercise. *See* §§ 83(a), 83(h), 1.83–1(a)(1), 1.83–6(a)(1).

For various other tax purposes, however, the IRS has adopted modified versions of economic pricing models, such as the Black-Scholes model, for valuing stock options at specific points in time prior to exercise. See Rev. Proc. 98–34, 1998–1 C.B. 983 (estate and gift tax valuation); Rev. Proc. 2002–13, 2002–8 I.R.B. 549, as modified by Rev. Proc. 2002–45, 2002–27 I.R.B. 40 (measurement of stock-option-based golden parachute payments under sections 280G and 4999). Pricing models also have been adopted in the context of financial accounting. The Financial Accounting Standards Board (FASB) refers to pricing models for measurement of the stock-based compensation expense that a company is required to report at ''fair value,'' either as a charge to income or, at the company's option, in a pro forma footnote disclosure. *See* FASB Statement 123, Accounting for Stock-Based Compensation (October 1995).

Generally accepted pricing models can be applied at the date of grant to estimate the economic cost of a stock option to the issuer. General support for the use of economic measures of cost in the transfer pricing context may be found in the legislative history of the commensurate with income standard and in the White Paper, which state that to be consistent with the commensurate with income standard, cost sharing arrangements must ''reflect the actual economic activity'' of participants. Conference Report at II–638 and White Paper at 1988–2 C.B. 495.

In establishing rules for measurement of the operating expenses attributable to stock-based compensation for cost sharing purposes, Treasury and the IRS believe that due regard must be given to the emphasis placed on economic factors in the legislative history of the commensurate with income standard and in the White Paper. Treasury and the IRS also recognize the importance of providing rules that are administrable.

The proposed regulations prescribe a general rule of measurement based primarily on the amount and timing of the income tax deduction associated with stock-based compensation, while in certain cases permitting controlled participants in a qualified cost sharing arrangement to elect a rule of measurement with respect to stock options based on the amount and timing of the fair value of the option that is required to be computed for purposes of financial accounting in accordance with United States generally accepted accounting principles (U.S. GAAP).

To provide for uniform measurement of the cost associated with both statutory and nonstatutory stock options, the general deduction-based measurement rule is applied as if section 421 did not apply upon the exercise of a statutory stock option. Thus, although section 421 generally disallows compensation deductions with respect to the exercise of statutory stock options except in the case of certain disqualifying dispositions, the proposed regulations treat the exercise of a statutory stock option as giving rise to a deduction for purposes of the deduction-based measurement rule. Consequently, the operating expense with respect to all stock options, whether statutory or nonstatutory, generally will be measured by the ''spread'' and taken into account as of the date the stock option is exercised.

To place a foreign controlled participant on an equal footing with a United States controlled participant, an amount is treated as deductible by a foreign controlled participant, solely for purposes of the general deduction-based measurement rule, as if the amount were paid or incurred by a United States taxpayer, even if the foreign controlled participant is not subject to United States taxing jurisdiction and so would not otherwise be entitled to a deduction under United States income tax law.

Solely for purposes of the general deduction-based measurement rule, any item of stock-based compensation that is eligible to be exercised and that remains

outstanding on the expiration or termination of a qualified cost sharing arrangement will be treated as being exercised immediately before the expiration or termination, provided that the fair market value of the underlying stock at that time exceeds the price at which the stock-based compensation is exercisable. The result of this treatment is that the excess of the fair market value of the underlying stock over the price at which the stock-based compensation is exercisable is taken into account as an operating expense for the taxable year in which the qualified cost sharing arrangement expires or terminates. This special rule would apply, for example, in the case of a currently exercisable statutory stock option or a substantially vested nonstatutory stock option where the fair market value of the underlying stock exceeds the option price at the time the qualified cost sharing arrangement is terminated. The rule ensures that controlled participants take into account for cost sharing purposes all stock-based compensation that is attributable to the development of intangibles and has become exercisable during the term of the cost sharing arrangement. In cases where significant amounts of stock-based compensation have been granted, but are not exercisable at the time of the termination of the arrangement, the IRS anticipates that factual issues regarding the termination of the qualified cost sharing arrangement will arise if the arrangement is reinstated.

A similar rule applies if, during the term of the qualified cost sharing arrangement, a newly granted stock option is determined to result from a repricing or other modification of another stock option and is not related to the development of intangibles at the time of the modification. In this situation, an amount is taken into account for purposes of the general deduction-based measurement rule as if the original stock option had been exercised immediately before the modification.

The proposed regulations permit an elective method of measurement and timing with respect to options on publicly traded stock of companies subject to financial reporting under U.S. GAAP, provided that the stock is traded on a United States securities market.

Under the election, the amount of the operating expense associated with compensatory stock options is their ''fair value,'' generally measured by reference to economic pricing models as of the date of grant, as reflected either as a charge against income or as a footnote disclosure in the company's audited financial statements, in compliance with current U.S. GAAP. Where the election is made with respect to stock in a company that does not take stock-based compensation expense as a charge against income for financial accounting purposes but rather chooses, as permitted by current U.S. GAAP (for example, FASB Statement 123), to disclose such compensation in a footnote to the financial statements, stock-based compensation is taken into account in the same amount, and as of the same time, as the pro forma fair value figures reflected in the footnote.

The election to measure the operating expense associated with compensatory stock options in accordance with financial accounting rules must be clearly referenced in the written cost sharing agreement required under § 1.482–7(b)(4) and must bind all controlled participants. A transition rule permits controlled participants to amend pre-existing cost sharing agreements not later than the latest due date (without regard to extensions) for an income tax return of a controlled participant for the first taxable year beginning after the effective date of final regulations incorporating this rule.

The proposed regulations contain consistency rules to ensure that all controlled participants in a qualified cost sharing arrangement normally will use the same method of measurement for all options on publicly traded stock with respect to that arrangement. Once a method of measurement has been adopted with respect to stock options granted in a taxable year following the effective date of the proposed regulations, the method of measurement may not be changed for those stock options. With respect to subsequently granted stock options to which the transition rule does not apply, the proposed regulations provide that a method of measurement different from that adopted following the effective date of the proposed regulations may be adopted only with the consent of the Commissioner.

To ensure that taxpayers maintain documentation supporting all amounts taken into account as operating expenses attributable to stock-based compensation, these proposed regulations add to the documentation requirements of § 1.482–7(j)(2)(i) an item specifically relating to stock-based compensation.

Treatment of Stock-Based Compensation Under Other Provisions

The treatment of stock-based compensation as a cost or operating expense for purposes of the transfer pricing of services and for purposes of applying the comparable profits method will be considered by Treasury and the IRS in a separate regulation project. Accordingly, these regulations do not propose amendments to the definitions of cost or operating expense in § 1.482–2(b) or § 1.482–5(d)(3). However, these proposed regulations amend § 1.482–5(c)(2)(iv) to clarify that in applying the comparable profits method, material differences among the tested party and uncontrolled comparables with respect to the utilization or treatment of stock-based compensation are an appropriate basis for comparability adjustments.

Coordination of Cost Sharing With the Arm's Length Standard

These proposed regulations add express provisions coordinating the cost sharing rules of § 1.482–7 with the arm's length standard as set forth in § 1.482–1. New § 1.482–7(a)(3) clarifies that in order for a qualified cost sharing arrangement to produce results consistent with an arm's length result within the meaning of § 1.482–1(b)(1), all requirements of § 1.482–7 must be met, including the requirement that each controlled participant's share of intangible development costs equal its share of reasonably anticipated benefits attributable to the development of intangibles. The proposed regulations also make amendments to § 1.482–1 to clarify that § 1.482–7 provides the specific method to be used to evaluate whether a qualified cost sharing arrangement produces results consistent with an arm's length result, and to clarify that under the best method rule, the provisions of § 1.482–7 set forth the applicable method with respect to qualified cost sharing arrangements.

Through these new provisions, Treasury and the IRS intend to clarify that all of the specific rules necessary to the determination of costs, reasonably anticipated benefits and other aspects of qualified cost sharing arrangements are either contained or cross-referenced within § 1.482–7. Thus, for example, regarding buy-in payments with respect to pre-existing intangibles made available to qualified cost sharing arrangements, §§ 1.482–7(a)(2) and 1.482–7(g) cross-reference various other sections of the regulations under section 482. For the determination of reasonably anticipated benefits, § 1.482–7(f)(3) expressly requires that certain comparability factors described in § 1.482–1(c)(2)(ii) under the best method rule be considered. With respect to identification of the costs to be shared, the rules are contained within § 1.482–7(d)(1), which refers to ''all'' intangible development costs and cross-references the definition of operating expenses in § 1.482–5(d)(3) and the provisions of

§ 1.482–2(c) governing determination of arm's length rental charges for tangible property. The § 1.482–7(d)(1) definition of intangible development costs is supplemented by the provisions of § 1.482–7(c)(2), which cross-references the provisions of § 1.482–4(f)(3)(iii) to determine arm's length consideration for research assistance performed by a controlled taxpayer that is not a controlled participant.

Proposed Effective Date

These regulations are proposed to apply to stock-based compensation granted in taxable years beginning on or after the date these regulations are published as a Treasury Decision promulgating final regulations in the **Federal Register**. Notwithstanding this prospective effective date, Treasury and the IRS intend that taxpayers may rely on these proposed regulations until the effective date of the final regulations. No inference is intended with respect to the treatment of stock-based compensation granted in taxable years beginning before the effective date of the final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also 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 collections 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 few small entities are expected to enter into qualified cost sharing arrangements involving stock-based compensation, and that for those who do, the burdens imposed under §§ 1.482–7(d)(2)(iii)(B) and 1.482–7(j)(2)(i)(F) will be minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. Treasury and the IRS specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 21, 2002, at 10 a.m., in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 30, 2002. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Douglas Giblen of the Office of Associate Chief Counsel (International). However, other personnel from Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Sections 1.482–1, 1.482–5 and 1.482–7 also issued under 26 U.S.C. 482. * * *

Section 1.482–0 is amended by:

1. Redesignating the entry for § 1.482–7(a)(3) as the caption for § 1.482–7(a)(4).

2. Adding a new entry for § 1.482–7(a)(3).

3. Redesignating the entry for § 1.482–7(d)(2) as the caption for § 1.482–7(d)(3).

4. Adding new entries for § 1.482–7(d)(2).

The additions and revisions read as follows:

§ 1.482–0 Outline of regulations under section 482.

* * * * *

§ 1.482–7 Sharing of costs.

(a) In general.

* * * * *

(3) Coordination with § 1.482–1.

(4) Cross references.

* * * * *

(d) Costs.

* * * * *

(2) Stock-based compensation.

(i) In general.

(ii) Identification of stock-based compensation related to intangible development.

(iii) Measurement and timing of stock-based compensation expense.

(A) In general.

(*1*) Transfers to which section 421 applies.

(*2*) Deductions of foreign controlled participants.

(*3*) Modification of stock option.

(*4*) Expiration or termination of qualified cost sharing arrangement.

(B) Election with respect to options on publicly traded stock.

(C) Consistency.

(3) Examples.

* * * * *

Section 1.482–1 is amended by:

1. Revising the sixth sentence of paragraph (a)(1).

2. Adding a sentence following the sixth sentence of paragraph (a)(1).

3. Adding a sentence at the end of paragraph (b)(2)(i).

4. Adding a sentence at the end of paragraph (c)(1).

5. Adding paragraph (j)(5).

The additions and revisions read as follows:

§ 1.482–1 Allocation of income and deductions among taxpayers.

(a) * * *

(1) * * * Section 1.482–7T sets forth the cost sharing provisions applicable to taxable years beginning on or after October 6, 1994, and before January 1, 1996. Section 1.482–7 sets forth the cost sharing provisions applicable to taxable years beginning on or after January 1, 1996. * * *

* * * * *

(b) * * *

(2) * * *

(i) * * * Section 1.482–7 provides the specific method to be used to evaluate whether a qualified cost sharing arrangement produces results consistent with an arm's length result.

* * * * *

(c) * * *

(1) * * * See § 1.482–7 for the applicable method in the case of a qualified cost sharing arrangement.

* * * * *

(j) * * *

(5) The last sentences of paragraphs (b)(2)(i) and (c)(1) of this section and of paragraph (c)(2)(iv) of § 1.482–5 are effective for taxable years beginning on or after the date of publication of the Treasury Decision incorporating those sentences into final regulations in the **Federal Register**.

Section 1.482–5 is amended by adding a sentence to paragraph (c)(2)(iv) to read as follows:

§ 1.482–5 Comparable profits method.

* * * * *

(c) * * *

(2) * * *

(iv) * * * As another example, it may be appropriate to adjust the operating profit of a party to account for material differences in the utilization of or accounting for stock-based compensation (as defined by § 1.482–7(d)(2)(i)) among the tested party and comparable parties.

* * * * *

Section 1.482–7 is amended by:

1. Redesignating paragraph (a)(3) as paragraph (a)(4).

2. Adding paragraph (a)(3).

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

4. Adding paragraph (d)(2).

5. Removing the word ''and'' at the end of paragraph (j)(2)(i)(D).

6. Removing the period and adding a semicolon and the word ''and'' at the end of paragraph (j)(2)(i)(E).

7. Adding paragraph (j)(2)(i)(F).

8. Revising paragraph (k).

The additions and revisions read as follows:

§ 1.482–7 Sharing of costs.

(a) * * *

(3) *Coordination with § 1.482–1.* A qualified cost sharing arrangement produces results that are consistent with an arm's length result within the meaning of § 1.482–1(b)(1) if, and only if, each controlled participant's share of the costs (as determined under paragraph (d) of this section) of intangible development under the qualified cost sharing arrangement equals its share of reasonably anticipated benefits attributable to such development (as required by paragraph (a)(2) of this section) and all other requirements of this section are satisfied.

(4) Cross references. * * *

* * * * *

(d) * * *

(2) *Stock-based compensation.*—(i) *In general.* For purposes of this section, a controlled participant's operating expenses include all costs attributable to compensation, including stock-based compensation. As used in this section, the term *stock-based compensation* means any compensation provided by a controlled participant to an employee or independent contractor in the form of equity instruments, options to acquire stock (stock options), or rights with respect to (or determined by reference to) equity instruments or stock options, including but not limited to property to which section 83 applies and stock options to which section 421 applies, regardless of whether ultimately settled in the form of cash, stock, or other property.

(ii) *Identification of stock-based compensation related to intangible development.* The determination of whether stock-based compensation is related to the intangible development area within the meaning of paragraph (d)(1) of this section is made as of the date that the stock-based compensation is granted. Accordingly, all stock-based compensation that is granted during the term of the qualified cost sharing arrangement and is related at date of grant to the development of intangibles covered by the arrangement is included as an intangible development cost under paragraph (d)(1) of this section. In the case of a repricing or other modification of a stock option, the determination of whether the repricing or other modification constitutes the grant of a new stock option for purposes of this paragraph (d)(2)(ii) will be made in accordance with the rules of section 424(h) and related regulations.

(iii) *Measurement and timing of stock-based compensation expense.*—(A) *In general.* Except as otherwise provided in this paragraph (d)(2)(iii), the operating expense attributable to stock-based compensation is equal to the amount allowable to the controlled participant as a deduction for federal income tax purposes with respect to that stock-based compensation (for example, under section 83(h)) and is taken into account as an operating expense under this section for the taxable year for which the deduction is allowable.

(*1*) *Transfers to which section 421 applies.* Solely for purposes of this paragraph (d)(2)(iii)(A), section 421 does not apply to the transfer of stock pursuant to the exercise of an option that meets the requirements of section 422(a) or 423(a).

(*2*) *Deductions of foreign controlled participants.* Solely for purposes of this paragraph (d)(2)(iii)(A), an amount is treated as deductible by a foreign controlled participant otherwise not entitled to a deduction under United States income tax law as if the amount were paid or incurred by a United States taxpayer.

(*3*) *Modification of stock option.* Solely for purposes of this paragraph (d)(2)(iii)(A), if the repricing or other modification of a stock option is determined, under paragraph (d)(2)(ii) of this section, to constitute the grant of a new stock option not related to the development of intangibles, the stock option that is repriced or otherwise modified will be treated as being exercised immediately before the modification, provided that the stock option is then substantially vested within the meaning of § 1.83–3(b) (or, in the case of stock options to which section 421 applies, exercisable) and the fair market value of the underlying stock then exceeds the price at which the stock option is exercisable. Accordingly, the amount of the deduction that would be allowable (or treated as allowable under this paragraph (d)(2)(iii)(A)) to the controlled participant upon exercise of the stock option immediately before the modification must be taken into account as an operating expense as of the date of the modification.

(*4*) *Expiration or termination of qualified cost sharing arrangement.* Solely for purposes of this paragraph (d)(2)(iii)(A), if an item of stock-based compensation related to the development of intangibles is not exercised during the term of a qualified cost sharing arrangement, that item of stock-based compensation will be treated as being exercised immediately before the expiration or termination of the qualified cost sharing arrangement, provided that the stock-based compensation is then substantially vested within the meaning of § 1.83–3(b) (or, in the case of stock options to which section 421 applies, exercisable) and the fair market value of the underlying stock then exceeds the price at which the stock-based compensation is exercisable. Accordingly, the amount of the deduction that would be allowable (or treated as allowable under this paragraph (d)(2)(iii)(A)) to the controlled participant upon exercise of the stock-based compensation must be taken into account as an operating expense as of the date of the expiration or termination of the qualified cost sharing arrangement.

(B) *Election with respect to options on publicly traded stock.* With respect to stock-based compensation in the form of options on publicly traded stock, the controlled participants in a qualified cost sharing arrangement may elect to take into account all operating expenses attributable to those stock options in the same amount, and as of the same time, as the fair value of the stock options reflected as a charge against income in audited financial statements or

disclosed in footnotes to such financial statements, prepared in accordance with United States generally accepted accounting principles by or on behalf of the company issuing the publicly traded stock. As used in this section, the term *publicly traded stock* means stock that is regularly traded on an established United States securities market and is issued by a company whose financial statements are prepared in accordance with United States generally accepted accounting principles for the taxable year. The election described in this paragraph (d)(2)(iii)(B) is made by an explicit reference to the election in the written cost sharing agreement required by paragraph (b)(4) of this section or in a written amendment to the cost sharing agreement entered into with the consent of the Commissioner pursuant to paragraph (d)(2)(iii)(C) of this section. In the case of a qualified cost sharing arrangement in existence on the effective date of this paragraph (d)(2)(iii)(B), the election must be made by written amendment to the cost sharing agreement not later than the latest due date (without regard to extensions) of a federal income tax return of any controlled participant for the first taxable year beginning after the effective date of this paragraph, and the consent of the Commissioner is not required.

(C) *Consistency.* Generally, all controlled participants in a qualified cost sharing arrangement taking options on publicly traded stock into account under paragraph (d)(2)(iii)(A) or (d)(2)(iii)(B) of this section must use that same method of measurement and timing for all options on publicly traded stock with respect to that qualified cost sharing arrangement. Controlled participants may change their method only with the consent of the Commissioner and only with respect to stock options granted during taxable years subsequent to the taxable year in which the Commissioner's consent is obtained. All controlled participants in the qualified cost sharing arrangement must join in requests for the Commissioner's consent under this paragraph. Thus, for example, if the controlled participants make the election described in paragraph (d)(2)(iii)(B) of this section upon the formation of the qualified cost sharing arrangement, the election may be revoked only with the consent of the Commissioner, and the consent will apply only to stock options granted in taxable years subsequent to the taxable year in which consent is obtained. Similarly, if controlled participants already have granted stock options that have been or will be taken into account under the general rule of paragraph (d)(2)(iii)(A) of this section, then except in cases specified in the last sentence of paragraph (d)(2)(iii)(B) of this section, the controlled participants may make the election described in paragraph (d)(2)(iii)(B) of this section only with the consent of the Commissioner, and the consent will apply only to stock options granted in taxable years subsequent to the taxable year in which consent is obtained.

(3) *Examples.* * * *

* * * * *

(j) * * *

(2) * * *

(i) * * *

(F) The amount taken into account as operating expenses attributable to stock-based compensation, including the method of measurement and timing used with respect to that amount as well as the data, as of date of grant, used to identify stock-based compensation related to the development of intangibles covered by the qualified cost sharing arrangement.

* * * * *

(k) *Effective date.* This section is generally effective for taxable years beginning on or after January 1, 1996. However, paragraphs (a)(3), (d)(2) and (j)(2)(i)(F) of this section are effective for taxable years beginning on or after the date of publication of the Treasury Decision adopting those rules as final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–19126 Filed 7–26–02; 8:45 am]

BILLING CODE 4830–01–P

Notices

Federal Register
Vol. 67, No. 145
Monday, July 29, 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

Food and Nutrition Service

National Advisory Council on Maternal, Infant, and Fetal Nutrition; Notice of Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., this notice announces a meeting of the National Advisory Council on Maternal, Infant, and Fetal Nutrition.

Date and Time: September 4–6, 2002, 9 a.m.–5 p.m.

Place: Food and Nutrition Service, 3101 Park Center Drive, Conference Room 204–C, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION: The Council will continue its study of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP). The agenda items will include a discussion of general program issues.

Status: Meetings of the Council are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements with the contact person named below, before or after the meeting.

Contact Person for Additional Information: Persons wishing additional information about this meeting should contact Jackie Rodriguez, Supplemental Food Programs Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 520, Alexandria, Virginia 22302. Telephone: (703) 305–2747.

Dated: July 12, 2002.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 02–19076 Filed 7–26–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section 4 of the Nevada State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Nevada NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Nevada that changes must be made in the NRCS State Technical Guide specifically in practice standard 590 Nutrient Management, to account for state specific requirements and improved technology. This practice applies all lands were plant nutrients and soil amendments are applied and is used in systems that managed the amount, source(s), placement, form and timing of application of nutrients and soil amendments.

DATES: Comments will be received for a period of 30 days following the publication date of this notice.

FOR FURTHER INFORMATION CONTACT: Nicholas Pearson, State Conservationist, Natural Resources Conservation Service, 5301 Longley Lane, Bldg. F, Suite 201, Reno, Nevada 89511–1805; phone (775) 784–5863; or fax (775) 784–5939.

SUPPLEMENTARY INFORMATION: If you would like to review the practice standard mentioned above, contact Nicholas Pearson at the above address or phone number or William Daily or Peggy Hughes at the above address or phone (775)784–5318 or visit our Web site at *www.nv.nrcs.usda.gov.*

For the next 30 days, the NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made to subject standard.

Dated: July 9, 2002.

Richard Vigil,

Deputy State Conservationist, Nevada.

[FR Doc. 02–19108 Filed 7–26–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Assistance Center Internet Website Form; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, 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 September 27, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW, Washington, DC 20230 or via the Internet at MClayton@doc.gov.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Jason Sproule, U.S. Department of Commerce, Newport Beach U.S. Export Assistance Center, 3300 Irvine Avenue, Ste-305, Newport Beach, CA 92660; Phone number: (949) 660–1668, and fax number: (949) 660–8039.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Newport Beach U.S. Export Assistant Center, which is a combined effort of the U.S. Department of Commerce, Export-Import Bank, and Small Business Administration provides a comprehensive array of export counseling and trade finance services to small and medium-sized U.S. exporting firms. It proposes the extension of the Office of Management and Budget's authorization for this information collection form to continue the usefulness of its interactive website. In

addition, this generic form will be used in its entirety or with minor modifications by all U.S. Export Assistance Centers and the Office of Domestic Operations. The form will ask U.S. exporting firm respondents to provide general background information and identify which service(s) they are interested in.

II. Method of Collection

The form is submitted via Internet, telephone, fax, or e-mail.

III. Data

OMB Number: 0625–0237.

Form Number: Not applicable.

Type of Review: Regular submission.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 5,750.

Estimated Time Per Response: 5–20 minutes.

Estimated Total Annual Burden Hours: 667 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $40,020.00 ($23,345.00 for respondents and $16,675.00 for federal government).

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 costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 23, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–19028 Filed 7–26–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Stainless Steel Sheet and Strip in Coils from Germany: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) has received information sufficient to warrant initiation of a changed circumstances administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Germany (64 FR 40557 (July 27, 1999)). On June 12, 2002, ThyssenKrupp Nirosta GmbH, formerly Krupp Thyssen Nirosta GmbH, informed the Department of its corporate name change effective December 19, 2001, and requested that the Department initiate and conduct an expedited changed circumstances review. Based on information provided in its June 12, 2002 letter, we preliminarily determine that ThyssenKrupp Nirosta GmbH is the successor firm to Krupp Thyssen Nirosta GmbH.[1]

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 29, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Background

On July 27, 1999, the Department published the antidumping duty order on stainless steel sheet and strip in coils from Germany. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 40557 (July 27, 1999). In a June 12, 2002 letter to the Department, ThyssenKrupp Nirosta GmbH requested that the Department initiate and conduct an expedited changed circumstances administrative review pursuant to section 751(b) of the Tariff Act to determine whether it is the successor-in-interest to Krupp Thyssen Nirosta GmbH for purposes of the antidumping duty order on stainless steel sheet and strip in coils from Germany. The company also asked the Department to issue preliminary results concurrently with the notice of initiation, pursuant to 19 CFR 351.221(c)(3)(ii). In its request, ThyssenKrupp Nirosta GmbH, formerly Krupp Thyssen Nirosta GmbH, notified the Department that effective December 19, 2001, its corporate name had changed to ThyssenKrupp Nirosta GmbH, and despite this change in corporate name, the management, production facilities, supplier relationships, and customer base are identical to those of the former Krupp Thyssen Nirosta GmbH. Citing the Department's determination in *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Notice of Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 66 FR 67513 (December 31, 2001) (*S4 from Korea Changed Circumstances Review*), ThyssenKrupp Nirosta GmbH claimed the Department should determine that it is the successor-in-interest to Krupp Thyssen Nirosta GmbH.

Scope of the Review

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or

[1] In addition to ThyssenKrupp Nirosta GmbH the following companies involved in the production, importation, and U.S. sale of subject merchandise have changed their corporate names: Krupp Thyssen Nirosta North America, Inc. to ThyssenKrupp Nirosta North America, Inc.; Krupp VDM GmbH to ThyssenKrupp VDM GmbH; and Krupp VDM Technologies Corporation to ThyssenKrupp VDM USA, Inc.

otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated,*etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[6]

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

In accordance with section 751(b) of the Tariff Act, the Department is initiating a changed circumstances administrative review to determine whether ThyssenKrupp Nirosta GmbH is the successor company to Krupp Thyssen Nirosta GmbH. In making such a determination, 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., S4 from Korea Changed Circumstances Review*, 66 FR 67513, 67515 and *Brass Sheet and Strip from Canada; Final Results of Changed Circumstances Review*, 57 FR 20460, 20461 (May 13, 1992). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is similar to that of the predecessor. *See, e.g., Industrial Phosphoric Acid from Israel; Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944, 6946 (February 14, 1994). Thus, if evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same entity as the former company, the Department will treat the new company as the successor-in-interest to the predecessor.

We have examined the information provided by ThyssenKrupp Nirosta GmbH in its June 12, 2002 letter and preliminarily determine that ThyssenKrupp Nirosta GmbH has established a *prima facie* case that it is the successor-in-interest to Krupp Thyssen Nirosta GmbH. In addition, we preliminarily determine ThyssenKrupp Nirosta North America, Inc., ThyssenKrupp VDM GmbH, and ThyssenKrupp VDM USA, Inc. are successors-in-interest to Krupp Thyssen Nirosta North America, Inc., Krupp VDM GmbH, and Krupp VDM Technologies Corp., respectively. ThyssenKrupp Nirosta GmbH has provided sufficient documentation to support our preliminary finding. Exhibits 8–A of ThyssenKrupp Nirosta GmbH's letter of June 12, 2002 illustrates that the management and supervisory Board of ThyssenKrupp Nirosta GmbH is identical to the management and supervisory Board of Krupp Thyssen Nirosta GmbH after the December 19, 2001 name change. It lists Jurgen H. Fechter as the chairman of the management board and Dr. Helmut Hadrys as the chairman of the supervisory board for both Krupp Thyssen Nirosta GmbH and ThyssenKrupp Nirosta GmbH. Exhibit 8–B illustrates the Board of Directors for Krupp Thyssen Nirosta North America, Inc. is identical to ThyssenKrupp Nirosta North America, Inc. *See* proprietary version of Exhibit 8–B of ThyssenKrupp Nirosta GmbH's June12, 2002 submission. Exhibit 8–C lists Rolf-Dieter Grosskopf as chairman of the management board and Dr. Helmut Hadrys the chairman of the supervisory board for Krupp VDM GmbH and ThyssenKrupp VDM GmbH. The board membership for Krupp VDM Technologies Corp. is identical to ThyssenKrupp VDM USA, Inc. as listed in Exhibit 8–D. Exhibit 7 of ThyssenKrupp Nirosta GmbH's June 12, 2002 letter demonstrates there has been no change in the ownership. As determined in the original investigation of stainless steel sheet and strip in coils from Germany, the former Krupp Thyssen Nirosta GmbH was a privately-held company; ThyssenKrupp Nirosta GmbH is also a privately held company with an ownership structure identical to that found in the most recently-completed administrative review of stainless steel sheet and strip in coils from Germany. In addition to ThyssenKrupp Nirosta GmbH, we preliminarily find ThyssenKrupp Nirosta North America, Inc., ThyssenKrupp VDM GmbH, and ThyssenKrupp VDM USA, Inc. are also privately held companies with an ownership structure identical to the ownership structure found in the most recently-completed administrative review of Krupp Thyssen Nirosta North America, Inc., Krupp VDM GmbH, Krupp VDM Technologies Corp., respectively. Exhibit 10–A of the June 12, 2002 submission contains an affidavit from Dorothea Kettendorf, a solicitor in the legal department of ThyssenKrupp Steel A.G., certifying that i) the corporate name change was pursuant to a directive issued by ThyssenKrupp A.G.; ii) the shareholders of Krupp Thyssen Nirosta GmbH and Krupp VDM GmbH approved the changes in the companies' respective corporate names; and iii) the changes have been registered with the relevant government authorities in Germany. She also states ThyssenKrupp Nirosta GmbH and ThyssenKrupp VDM GmbH did not undergo any material changes in operations resulting from the corporate name changes. Exhibit 10–B of the June 12, 2002 submission contains an affidavit from Erhard Meier, the treasurer of ThyssenKrupp Nirosta North America, Inc., stating effective December 27, 2001 Krupp Thyssen Nirosta North America, Inc. officially changed its corporate name to ThyssenKrupp Nirosta North America, Inc. Mr. Meier certified the company underwent a name change and it has not affected the ownership, management, corporate structure, production facility, production process, sales operation, customer base, or supplier base as a result of the name change. Exhibit 10–C of the June 12, 2002 submission contains an affidavit from Vincent D. Coppolecchia, President of ThyssenKrupp VDM USA, Inc., stating effective May 23, 2002 Krupp VDM Technologies Corp. officially changed its corporate name to ThyssenKrupp VDM USA, Inc. Mr. Coppolecchia certified the company underwent a name change and it has not affected the ownership, management, corporate structure, production facility, production process, sales operation,

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

customer base, or supplier base as a result of the name change. Finally, ThyssenKrupp Nirosta GmbH, ThyssenKrupp Nirosta North America, Inc., ThyssenKrupp VDM GmbH, and ThyssenKrupp VDM USA, Inc., have provided sufficient documentation of the name change. *See, e.g.*, Exhibits 3 through 6 of the June 12, 2002 submission (notarized document that at the general meeting of the company it agreed to change the name of the company, and certificate of amendment to the certificate of incorporation). Therefore, we preliminarily determine that ThyssenKrupp Nirosta GmbH, ThyssenKrupp Nirosta North America, Inc., ThyssenKrupp VDM GmbH, and ThyssenKrupp VDM USA, Inc., have maintained the same management, production facilities, supplier relationships, and customer bases as did Krupp Thyssen Nirosta GmbH, Krupp Thyssen Nirosta North America, Inc., Krupp VDM GmbH, Krupp VDM Technologies Corp., respectively. Based upon the foregoing, we preliminarily determine that ThyssenKrupp Nirosta GmbH, ThyssenKrupp Nirosta North America, Inc., ThyssenKrupp VDM GmbH, and ThyssenKrupp VDM USA, Inc. are the successors-in-interest to Krupp Thyssen Nirosta GmbH, Krupp Thyssen Nirosta North America, Inc., Krupp VDM GmbH, Krupp VDM Technologies Corp., respectively, and we find it appropriate to issue the preliminary results in combination with the notice of initiation in accordance with 19 CFR 351.221(c)(3)(ii). If there are no changes in the final results of the changed circumstances review, ThyssenKrupp Nirosta GmbH and ThyssenKrupp VDM GmbH will retain the antidumping duty cash deposit rate assigned to Krupp Thyssen Nirosta GmbH and Krupp VDM GmbH in the most recent administrative review of the subject merchandise.

Public Comment

Pursuant to 19 CFR 351.310, any interested party may request a hearing within 10 days of publication of this notice. Case briefs and/or written comments from interested parties may be submitted no later than 21 days after the date of publication of this notice. Rebuttal briefs and rebuttals comments, limited to the issues raised in those case briefs or comments, may be filed no later than 28 days after the publication of this notice. All written comments must be submitted and served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Any hearing, if requested, will be held no later than 30 days after the date of publication of this notice, or the first working day thereafter. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish in the **Federal Register** a notice of final results of this changed circumstances antidumping duty administrative review, including the results of its analysis of any issues raised in any written comments.

During the course of this changed circumstances review, we will not change any cash deposit instructions on the merchandise subject to this review, unless a change is determined to be warranted pursuant to the final results of this review.

We are issuing and publishing this determination and notice in accordance with sections 751(b) and 777(i)(1) of the Tariff Act and 19 CFR 351.221(c)(3) and 19 CFR 351.216.

Dated: July 16, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19110 Filed 7–26–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Coastal Zone Management Program and National Estuarine Research Reserve

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Delaware National Estuarine Research Reserve and the Delaware National Estuarine Research Reserve and the Delaware Coastal Management Program. Since the Coastal Management Program and the National Estuarine Research Reserve are administered by the same office, they are being evaluated together.

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 923, subpart L. The National Estuarine Research Reserve evaluation will be conducted pursuant to sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 921, subpart E and part 923, subpart L.

The CZMA requires continuing review of the performance of states with respect to coastal program and research reserve program implementation. Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document or Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. A public meeting will be held as party of the site visit.

Notice is hereby given of the dates of the site visit for the listed evaluations, and the date, local time, and location of the public meeting during the site visit.

The Delaware Coastal Management Program and National Estuarine Research Reserve evaluation site visit will be held September 16–20, 2002. One public meeting will be held during the week. The public meeting will be on Tuesday, September 17, 2002, from 6 p.m. to 8 p.m., in the Delaware Department of Natural Resources and Environmental Control Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware 19901.

Copies of the state's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the states, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Douglas Brown, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th floor, Silver Spring, Maryland 20910. When the evaluations are completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Douglas Brown, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver spring, Maryland 20910, (301) 713–3155, Extension 215.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 24, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–19116 Filed 7–26–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072202A]

Receipt of an Application for an Incidental Take Permit (1398)

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

ACTION: Notice of availability.

SUMMARY: NMFS has received an application for an incidental take permit (Permit) from the North Carolina Division of Marine Fisheries (NCDMF) pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, NCDMF's application includes a conservation plan designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is for the incidental take of ESA-listed adult and juvenile sea turtles associated with otherwise lawful commercial fall gill net fisheries for flounder operating in Pamlico Sound, NC. The duration of the proposed Permit is for 3 years. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on this document. All comments received will become part of the public record and will be available for review.

DATES: Written comments from interested parties on the Permit application and Plan must be received at the appropriate address or fax number (see *ADDRESSES*) no later than 5 p.m. Eastern daylight time on August 28, 2002.

ADDRESSES: Written comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. The application is available for download and review at http://www.nmfs.noaa.gov/prot__res /PR3 / Permits / ESA Permit.html. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: David Bernhart (ph. 727– 570– 5312, fax 727– 570– 5517, e-mail David.Bernhart @ noaa.gov). Comments received will also be available for public inspection, by appointment, during normal business hours by calling 301– 713–1401.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in this Notice

The following species are included in the conservation plan and Permit application: Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles.

Background

NMFS issued Permt ı1259 to NCDMF (65 FR 65,840, November 2, 2000) and Permit ı1348 (66 FR 51,023, October 5, 2001) for managing the sea turtle interactions in certain factions of the 2000 and 2001 commercial fall gill net fisheries for flounder in the southeastern portion of Pamlico Sound. On July 18, 2002, NCDMF submitted an application to NMFS for a Permit (ı1398) authorizing incidental take of ESA-listed sea turtles associated with the shallow water fishery for the 2002, 2003, and 2004 fall fishing seasons. This application includes endangered Kemp's ridley, leatherback, and hawksbill sea turtles and the threatened green and loggerhead sea turtles. This fishery targets flounder. The proposed implementation of this fishery will allow for the continued commercial harvest of this species. This fishery is estimated to have a value of over one million dollars per year. This fishery supports fishermen and the local economy.

Conservation Plan

The conservation plan prepared by NCDMF describes measures designed to monitor, minimize, and mitigate the incidental takes of ESA-listed sea turtles. The conservation plan includes managing the shallow water large and small mesh gill net fishery which operates from April through December in areas adjacent to the Outer Banks and mainland in Pamlico Sound. Three gill net restricted areas (GNRAs) will be designated for the eastern Pamlico Sound and two GNRAs in the western Pamlico Sound along the mainland in Hyde and Pamlico Counties.

The three eastern GNRAs consist of waters extending out from the barrier islands to a depth of less than 20 feet (6.1 m). The three GNRAs from south to north are as follows: (1) the area from Wainwright Island including Ocracoke Inlet bound by Core Banks; (2) the area north of Ocracoke Inlet to and encompassing Hatteras Inlet; (3) the area north of Hatteras Inlet to and encompassing Oregon Inlet. The shallow water fishery operates from April through December in depths typically less than 3 feet (1.0 m). Vessels are usually open skiffs ranging from 15 to 25 feet (4.6 to 7.6 m) in length. Each fisherman sets 500 to 2000 yards (457 to 1,828 m) of large mesh (5.5 to 7.0 inch (14.0 to 17.8 cm)) or small mesh (3.5 to 4.5 inch (8.90 to 11.4 cm)) gill net, which are soaked overnight and retrieved by hand.

Monitoring during the 2000 fishing season consisted of 4.3 percent coverage of this fishery with 37 trips observed. Four sea turtle interactions were observed and all were green turtles, three were released alive. During the 2001 fishing season, 131 large mesh trips were observed which represented 9 percent coverage. Four green sea turtles and one hawksbill were observed in the large mesh gill net fishery. For the small mesh fishery, 47 trips were observed for the ''set'' net and 12 trips observed for the ''runaround'' accomplishing 20 and 8.4 percent coverage, respectively. No sea turtle interactions were observed.

In addition to the Outer Banks fisheries, a mainland based flounder gill net fishery occurs in the shallow water bays and along the shoreline of Hyde and Pamlico Counties. The two GNRAs consist of all mainland areas within 200 yards (183 m) of shore between 76 30'W and 76 50'W. The fishery operating in this area is similar to the Outer Banks fishery with the effort from April through December. Fishing depths are typically less than 3 feet (1.0 m), and each fisherman sets 500 to 2000 yards (457 to 1,828 m) of large mesh (5.5 to 7.0 inch (14.0 to 17.8 cm)), which are soaked overnight and retrieved by hand. This fishery did not operate during the 2001 fishing season due to the 2001 closure of Pamlico Sound (66 FR 50350, October 3, 2001). No observer trips have been conducted within this fishery and therefore there have been no

documented sea turtle takes. However, NCDMF has been conducting an independent gill net survey in this area since May 2001 and completed approximately 1,800 unattended 30 yard (27.4 m) gill net sets composed of large and small stretched mesh with no sea turtle interactions to date.

The annual anticipated lethal and nonlethal incidental take of sea turtles is anticipated to be 72 and 492, respectively. This level is anticipated to consists of equal portions of Kemp's ridley, green, and loggerhead turtles. NCDMF is proposing to limit the commercial fall gill net fishery for flounder such that the incidental impacts on ESA-listed sea turtles will be minimized. NCDMF would use a variety of adaptive fishery management measures and restrictions through their state proclamation authority to reduce sea turtle mortality in the fall gill net fishery by 50 percent, compared to the mortality level indicated by strandings in 1999. NCDMF considered and rejected one other alternative, not applying for a permit and closing the fishery, when developing their conservation plan.

This notice is provided pursuant to section 10(c) of the ESA and the National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6). NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for incidental takes of ESA-listed sea turtles under the jurisdiction of NMFS. The final NEPA and permit determinations will not be completed until after the end of the 30–day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: July 22, 2002.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–19115 Filed 7–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071702C]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on August 14–15, 2002. The Council will convene on Wednesday, August 14, 2002, from 9 a.m. to 4 p.m., and the Administrative Committee will meet from 4:15 p.m. to 5:30 p.m. On Thursday, August 15, 2002, the Council will meet from 9 a.m. to 5 p.m., approximately.

ADDRESSES: The meetings will be held at the Divi Carina Bay Resort and Carina, in 25 Estate Turnerhole, Christiansted, St. Croix, USVI.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 109th regular public meeting to discuss the items contained in the following agenda:

August 14, 2002, 9 a.m.–5:30 p.m.

Call to Order

Election of Officials

Adoption of Agenda

Consideration of 108th Council Meeting Verbatim Transcription

Sustainable Fisheries Act Comprehensive Amendment

Essential Fish Habitat-Environmental Impact Assessment Progress Report

4:15 p.m.–5:30 p.m.

Administrative Committee Meeting

–Advisory Panel/SSC/HAP Membership
–Budget Projection
–Personnel Retirement Issues
–Other Business

August 15, 2002, 9 a.m.–5 p.m.

Queen Conch Fishery Management Plan

–Data Update – Monica Valle
–Recovery Plan
–Revision Queen Conch Amendment

Reeffish Fishery Management Plan

–Aquarium Trade

Enforcement

–Federal Government
–Puerto Rico
–U.S. Virgin Islands
–U.S. Coast Guard

Administrative Committee Meeting Recommendations

Stock Assessment Review Committee Meeting

Meetings Attended by Council Members and Staff

Other Business

Next Council Meeting

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: July 24, 2002.

Richard W. Surdi,

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

[FR Doc. 02–19113 Filed 7–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072302C]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Ad Hoc Red Snapper Advisory Panel (AP) from August 12–14, 2002.

DATES: The Council's Ad Hoc Red Snapper AP will convene at 8:30 a.m. (CST) on Monday, August 12, 2002 and conclude by 5 p.m. on Wednesday, August 15, 2002.

ADDRESSES: The meeting will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL; telephone: 813–877–6688.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP will convene to discuss the issues related to and continue the development of an individual fishing quota (IFQ) profile for the commercial red snapper fishery. The profile will examine the benefits and consequences of using IFQs to manage the commercial red snapper fishery. When the profile is completed by the AP and Council, it will be submitted to the current participants in the fishery for a referendum to determine if the majority of the participants favor management by IFQs.

The AP members consist of commercial fishermen holding Class 1 or Class 2 commercial red snapper licenses, and licensed commercial reef fish dealers. They are assisted by 4 non-voting members with expertise in fishery economics, fishery biology, environmental science, and law enforcement. The completion of the profile will require several subsequent meetings of this AP.

Although other non-emergency issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813-228-2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by August 5, 2002.

Dated: July 24, 2002.

Richard W. Surdi,

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

[FR Doc. 02–19114 Filed 7–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense (DoD).

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Interference Capability will meet in closed session on August 21, 2002, in Washington, DC (place to be determined). This Task Force will review: New interference capabilities, identifying potentially high-payoff and high-threat capabilities; existing data, assessing technical merits; and potential threats to U.S. assets.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review and evaluate the Department's ability to provide information on high-payoff and high-threat capabilities.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: July 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–19030 Filed 7–26–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense (DoD).

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Against Terrorists' Use of Biological Weapons will meet in closed session on August 19, 2002; September 19, 2002; and October 18, 2002, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This Task Force will assess the scope of activities conducted by the DoD to ensure its future preparedness to deter, defend against, respond to, and attribute attack of the U.S. homeland by terrorists using biological weapons.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will conduct an assessment of the probable biological threats and the implications of new technologies on the threat spectrum, deterrence and consequence management; identify new technologies to provide satisfactory surveillance and verification of known and emerging diseases to ensure implementation of proactive defense measures and event mitigation; identify reliable and effective vaccines, anti-viral drugs and antibiotics, including the availability of sufficient vaccine and drug manufacturing capacity; determine logistical adequacy of the current supply chain for drug and vaccine production; identify capabilities to achieve reliable attribution of attackers once a BW attack has occurred; and identify defense capabilities and postures that have the largest potential for comprehensive protection of military and civilian targets.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force

meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: July 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–19031 Filed 7–26–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Senior Executive Service Performance Review Board

AGENCY: Office of the Inspector General of the Department of Defense (DoD).

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Services (SES) Performance Review Board (PRB) for the OIG DoD, as required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of SES performance appraisals and makes recommendations regarding performance ratings, perforamnce awards and recertification to the Inspector General.

DATES: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Peterson, Director, Personnel and Security, Office of Administration and Information Management, OIG DoD, 400 Army Navy Drive, Arlington, VA 22202, (703) 602–4516.

Charles W. Beardall, Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight, OAIG—for Investigations.
Thomas J. Bonnar, Deputy Assistant Inspector General for Investigations.
Patricia A. Brannin, Deputy Assistant Inspector General for Audit Policy and Oversight, OAIG—Auditing.
David A. Brinkman, Director, Audit Followup and Technical Support, OAIG—Auditing
C. Frank Broome, Director, Office of Departmental Inquiries.
Thomas F. Gimble, Director, Acquisition, Management, OAIG—Auditing.
Paul J. Granetto, Director, Contract Management, OAIG–Auditings.
Joel L. Leson, Director, Administration and Information Management.
Carol L. Levy, Assistant Inspector General for Investigations.
David K. Steensma, Deputy Assistant Inspector General for Auditing.
Shelton R. Young, Director, Readiness and Logistics Support, OAIG—Auditing.
Edward L. Blansitt, Deputy Inspector General, Department of Commerce.
Joel S. Gallay, Deputy Inspector General, General Services Admin.
Gary L. Johnson, Deputy Inspector General, Environmental Protection Agency.
Todd J. Zinser, Deputy Inspector General, Department of Transportation.

Dated: July 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–19032 Filed 7–26–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 27, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 23, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: No Child Left Behind—Blue Ribbon Schools Program.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 420.

Burden Hours: 16,800.

Abstract: The purpose of the program is to recognize and present as models elementary and secondary schools in the United States with high numbers of students from disadvantaged backgrounds that dramatically improve student performance to a high level on state or nationally-normed assessments and to recognize schools whose students achieve in the top 10 percent on state or nationally-normed assessments.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2074. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19036 Filed 7–26–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 27, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 23, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New.

Title: Federal PLUS Program Master Promissory Note.

Frequency: On Occasion.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: Phased in before 2004.

Burden Hours: 1845–0009.

Abstract: This promissory note is the means by which a Federal PLUS Program loan borrower promises to repay his or her loan.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2096. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.Reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to SCHUBART at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19068 Filed 7–26–02; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 27, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 23, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New.

Title: Federal Direct PLUS Loan Application and Master Promissory Note (MPN), and Endorser Addendum.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 225,000

Burden Hours: 225,000.

Abstract: The PLUS MPN is the means by which an individual applies for and agrees to repay a Federal Direct PLUS Loan. If an applicant for a Federal Direct

PLUS Loan is determined to have an adverse credit history and obtains an endorser, the Endorser Addendum is the means by which an endorser agrees to repay the loan if the borrower does not repay it.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2112. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.Reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* of faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joeseph Schubart at (202) 708–9266 or via his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19069 Filed 7–26–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Notice of Extension of Project Period and Waiver

AGENCY: Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of extension of project period and waiver.

SUMMARY: The Secretary waives the requirements in Education Department General Administrative Regulations (EDGAR), at 34 CFR 75.250 and 75.261(a), that generally prohibit project periods exceeding 5 years and project extensions involving the obligation of additional Federal funds to enable the Technical Assistance **ALLIANCE** for Parent Centers to receive funding from October 1, 2002 until March 31, 2003.

EFFECTIVE DATE: August 28, 2002.

FOR FURTHER INFORMATION CONTACT: For further information contact Debra Sturdivant or Donna Fluke, U.S. Department of Education, 400 Maryland Avenue, SW., room 3527, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8038 and 205–9161, respectively. FAX: (202) 205–8105. If you prefer to use the Internet, use the following address: *Debra_Sturdivant@ed.gov,* or *Donna_Fluke@ed.gov.*

If you use a telecommunication device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the above-listed contact persons.

SUPPLEMENTARY INFORMATION: In order to foster more efficient use of the Federal funds, the Secretary intends to redesign the technical assistance component of the Training and Information for Parents of Children with Disabilities program and provide funding in fiscal year 2003.

However, the grant for the current technical assistance provider, the Technical Assistance Alliance for Parent Centers will expire, after a 5-year project period, on September 30, 2002. Technical assistance is provided on an ongoing basis to parent centers, and it would be contrary to the public interest to have any service lapses for the parent centers being served by the current grantee. This would also include planning for, and conducting a scheduled annual National conference to be held in January 2003. The conference provides a forum for all of the parent centers to network, and participate in topical workshops and attend plenary sessions to learn about current research and best practices from National experts.

To avoid any lapse in service for the intended beneficiaries before the redesigned technical assistance component can be implemented, the Secretary has decided to fund this project until March 31, 2003. However, to do so, the Secretary has waived the requirements in 34 CFR 75.250 and 75.261(c)(2), which prohibit project periods exceeding 5 years and period extensions that involve the obligation of additional Federal funds.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rulemaking. However, the waiver of the requirements in 34 CFR 75.250 and 75.261 applicable to the maximum project period and extension of the project period for this grant on a one-time only basis is procedural and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), proposed rulemaking is not required.

In addition, given the fact that the additional period of funding is only for a six-month period, the Secretary has determined that proposed rulemaking on this waiver is unnecessary and impracticable. Thus, proposed rulemaking also is not required under 5 U.S.C. 553(b)(B).

Regulatory Flexibility Act Certification

The Secretary certifies that the waiver and extension of the project period will not have a significant economic impact on a substantial number of small entities. The only small entity that would be affected is the PACER Center, Inc., which operates the Technical Assistance ALLIANCE for Parent Centers project.

Paperwork Reduction Act of 1980

This extension and waiver does not contain any information collection requirements.

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.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.328, Training and Information for Parents of Children with Disabilities)

Dated: July 19, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–19078 Filed 7–26–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Tribally Controlled Postsecondary Vocational and Technical Institutions Program

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of extension of project period and waiver.

SUMMARY: We waive the requirement in 34 CFR 75.261(c)(2) as it applies to projects funded under the Tribally Controlled Postsecondary Vocational and Technical Institutions Program (TCPVTIP) in fiscal year (FY) 2001. We waive this requirement in order to be able to extend the project periods for the two current FY 2001 grants awarded under the TCPVTIP. A waiver means that: (1) current grants may be continued at least through FY 2004 (depending on the availability of appropriations for TCPVTIP in subsequent fiscal years under the current statutory authority), instead of ending in FY 2002; and (2) we will not announce a new competition or make new awards in FY 2002, as previously planned.

DATES: This notice is effective July 29, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon A. Jones, U.S. Department of Education, 400 Maryland Avenue, SW., room 4515, Mary E. Switzer Building, Washington, DC 20202–7242. Telephone (202) 205–9870.

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 this extension and waiver 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: On April 12, 2002 we published a notice in the **Federal Register** (67 FR 17976) proposing an extension and waiver in order to—

(1) Give the current grantees early notice of the possibility that additional years of funding may be available through continuation awards;

(2) Provide other eligible entities with notice that if the proposal for extension and waiver is published in final form, the Department will not be announcing a competition under this program in FY 2002; and

(3) Request comments on the proposed extension and waiver.

Analysis of Comments and Changes

In response to the Assistant Secretary's invitation in the notice of proposed extension and waiver, two parties submitted comments. The two commenters agreed with the proposal to extend the grants of the two current grantees. We did not receive any comments opposing the proposed extension and waiver. An analysis of comments and of changes in the notice since publication of the proposal follows. Generally, we do not address technical and other minor changes, as well as suggested changes the law does not authorize us to make. Moreover, we do not address comments that do not express views on the substance of the proposed notice.

Comments

One commenter thought that the proposed notice was silent regarding the applicability of certain sections of 34 CFR 75.253 in the Education Department General Administrative Regulations (EDGAR). Specifically, the commenter was not sure if we planned to apply § 75.253(a)(2)(i), which permits us to make a continuation award if the grantee makes substantial progress toward meeting the objectives of the approved application or § 75.253(a)(2)(ii), which permits us to make a continuation award if the grantee has obtained our approval of changes in the project that do not increase the cost of the grant and enable the recipient to meet those objectives in succeeding budget periods. The commenter thought only § 75.253(a)(2)(i) should be applied.

Discussion

The notice explained that decisions regarding continuation awards would be made based on Grant Performance Reports submitted by the two current grantees and the regulations in part 75 of EDGAR, most notably, 34 CFR 75.253. The process by which continuation decisions will be made this year is the same process by which those decisions have been made in the past in the TCPVTIP when multi-year project grants have been awarded. Consistent with 34 CFR 75.253, we would extend a grant if we determined, among other things, and based on information provided by the grantee, that it was making substantial progress performing grant activities. We said in our April 12th notice that ''making substantial progress'' would be considered ''among the other things.'' We did not intend to imply that we would apply only the EDGAR provisions specifically mentioned in the notice when making decisions regarding continuations.

We would also like to reiterate here for purposes of clarification, that decisions to continue a grant will also be based on information provided by each grantee. Since the FY 2001 grants were based on applications that described activities and budgets for one year, in accordance with § 75.253(c)(2), each grantee will necessarily have to send a written statement describing the activities it intends to carry out in FY 2002, FY 2003, and possibly FY 2004, if Congress appropriates funds under the current statutory authority. The activities described must be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantee's approved FY 2001 application. (34 CFR 75.261(c)(3)). As also provided in EDGAR, each grantee must submit a budget and budget narrative for each year it requests a continuation award. (34 CFR 75.118 and 75.253(c)(2)(i)).

While these provisions are contained in part 75 of EDGAR, we have described them in this notice so that grantees may be clear about what is needed to request a continuation award.

Change

None.

Comments

A commenter suggested that the start dates for FY 2002 projects should be the same for all grantees under the TCPVTIP. The commenter thought this was necessary in order for the Department to be able to determine the award amounts, particularly whether the appropriation in a given year is sufficient to pay in full the amount that approved applicants are eligible to receive.

Discussion

We currently ask grantees to provide the information we need to make continuation awards at the same time so we can (1) simultaneously review the scope of work and budgets of each grantee and (2) determine whether the appropriation is sufficient to pay in full the amount that approved applicants are eligible to receive. We can make those determinations without grantees having the same start dates. In addition, we believe that a grantee's start date is best

decided by the grantee, in cooperation with the Department.

Change

None.

Comments

One commenter thought continuation grants should include funding for only the eligible institutions and should not include what the commenter referred to as urban centers or other organizations that do not meet the eligibility criteria of the TCPVTIP or the Indian tribe or tribal organization.

Discussion

We will make continuation awards for only the two current FY 2001 grants awarded under the TCPVTIP and only for allowable costs. The two current grantees continue to meet the eligibility criteria in the Act.

Change

None.

Waiver of Delayed Effective Date

The Administrative Procedure Act requires that a substantive rule shall be published at least 30 days before its effective date, except as otherwise provided for good cause (20 U.S.C. 553(d)(3)). During the 30-day public comment period on this notice, no substantive comments or objections were received on the proposed extension and waiver, and no substantive changes have been made in this notice to the proposed project extension. For this reason, and in order to make timely continuation grants to the small number of entities affected, the Secretary has determined that a delayed effective date is not required.

Background

On March 28, 2001 (66 FR 17036), we issued a notice inviting applications for new awards under the TCPVTIP for FY 2001. In that notice, we announced that the project period would be three years for grants awarded under the competition. On May 16, 2001 (66 FR 27080), we issued a notice modifying the March 28th notice by reducing the project period from three years to one year and extending the application deadline. The one-year project period was intended to provide time for affected parties to confer with us and the Congress on the future implementation of the TCPVTIP. However, after the May 16th notice was published, Congress enacted the Supplemental Appropriations Act, 2001, Public Law 107–20. Section 2701 of Public Law 107–20 amended section 117 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins Act), which authorizes the TCPVTIP, and clarified congressional intent with respect to the implementation of the TCPVTIP by—

(a) Limiting eligibility to tribally controlled postsecondary vocational and technical institutions that do not receive Federal support under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Act (25 U.S.C. 640a *et seq.*); and

(b) Authorizing the use of funds under the TCPVTIP for institutional support.

In light of section 2701 of Public Law 107–20, and congressional action taken regarding eligibility and use of funds for institutional support, we believe that multi-year awards, rather than one-year awards, are now more appropriate for projects under this program and that they would result in a more effective use of Federal funds. Specifically, we believe that it is now in the best interest of the TCPVTIP for us to issue continuation awards to the existing FY 2001 grantees, rather than hold a new competition in FY 2002.

Moreover, the Perkins Act, which includes the TCPVTIP, expires at the end of FY 2003. With the uncertainties presented by the absence of authorizing legislation for the TCPVTIP beyond FY 2003, it does not appear to be appropriate to hold a competition in FY 2003 for projects that would operate in FY 2004. We are generally reluctant to announce a competition in which eligible entities would be expected to prepare and submit an application while they are lacking critical information about the future of the program, and we do not think that it would be in the public interest to do so in this case.

In addition, it is unlikely that the very limited group of eligible tribally controlled postsecondary vocational and technical institutions, other than the two current grantees, would undertake the effort and cost of applying for funding in FY 2002 or FY 2003 with the authorizing legislation expiring at the end of FY 2003. Further, as we indicated earlier in this notice, we received no comments objecting to this project extension for current grantees in lieu of a new competition. Thus, a new competition would be likely only to cause existing grantees to expend valuable time and resources applying for program funding under the existing authority, while not providing a meaningful funding opportunity for the limited group of other eligible applicants to apply for Federal funding.

EDGAR Requirement

In order to provide for multi-year awards, we must waive the requirement in 34 CFR 75.261(c)(2), which establishes the conditions for extending a project period, including prohibiting the extension of a program's project period if it involves the obligation of additional Federal funds.

This extension and waiver allows us to make continuation grants at least in FY 2002 and FY 2003 and perhaps beyond FY 2003 if Congress continues to appropriate funds for the TCPVTIP under the current statutory authority.

Programs Affected

The two FY 2001 grantees affected by this extension and waiver are Crownpoint Institute of Technology (CIT) and United Tribes Technical College (UTTC). This extension and waiver allow us to extend the current grantees' project periods for two years and for any additional years for which Congress appropriates funds under the current statutory authority. Decisions regarding continuation awards will be made based on Grant Performance Reports submitted by CIT and UTTC and the regulations at 34 CFR 75.253. Consistent with 34 CFR 75.253, we will extend each grant if we determine, among other things, and based on information provided by each grantee, that each grantee is making substantial progress performing grant activities. Under this extension and waiver, (1) the project period for the current grantees could be extended to FY 2004, and (2) additional continuation awards could be made for any additional year or years for which Congress appropriates funds under existing statutory authority.

We do not interpret the waiver as exempting the two current grantees from the account closing provisions of Pub. L. 101–510, or as extending the availability of FY 2001 funds awarded to the grantees. As a result of Pub. L. 101–510, appropriations available for a limited period may be used for payments of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the Treasury Department and is unavailable for restoration for any purpose.

Instructions for Requesting a Continuation Award Under EDGAR Part 75

Under applicable EDGAR provisions, each grantee wishing to receive an annual continuation grant must submit a performance report providing the most

current performance and financial expenditure information on its TCPVTIP project. (34 CFR 75.118)). Each grantee must also submit a program narrative that describes the activities it intends to carry out during FYs 2002, 2003, and 2004, of a continuation award. The activities described must be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantee's approved application. (34 CFR 75.261(c)(3)). In addition, each grantee must also submit a budget and budget narrative for each year it requests a continuation award. (34 CFR 75.253(c)(2)).

Paperwork Reduction Act of 1995

This extension and waiver does not contain any information collection requirements.

Intergovernmental Review

The TCPVTIP is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In the notice of proposed extension and waiver we requested comments on whether the proposed extension and waiver would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the notice of proposed extension and waiver and our own review, we have determined that this final notice of extension and waiver does not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.245 Tribally Controlled Postsecondary Vocational and Technical Institutions Program)

Program Authority: 20 U.S.C. 2327.

Dated: July 23, 2002.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 02–19077 Filed 7–26–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065 California]

El Dorado Irrigation District; Notice of Site Visit

July 23, 2002.

On August 15 and August 16, 2002, the Office of Energy Projects Staff (Staff) and the applicant will conduct an on-site visit of the El Dorado Project located on the South Fork of the American River in El Dorado, Alpine, and Amador Counties, California. On both days, the site visit will begin at 8:30 a.m, meeting at Harvey's Casino Hotel on Route 50 at Stateline Avenue, in Stateline, Nevada.

All interested parties and individuals are welcome to attend both days of the site visit. Group transportation by van or bus is planned; therefore, those planning to attend need to contact Susan O'Brien at (202) 219–2840 or susan.obrien@ferc.gov as soon as possible, but no later than August 1, 2002. Individuals who do not contact Ms. O'Brien by this date may have to provide their own transportation.

Tentative schedule for site visit (times given are in Pacific Daylight Savings):

Thursday, August 15
8:30 am:
  Site Visit Group departs from Harvey's Hotel in Stateline, NV
morning:
  Canal: tour stops at diversion dam, tunnel portal, canal viewpoints along Highway 50
lunch:
  in Placerville, CA
afternoon:
  Tour of forebay, powerhouse
4 pm:
  Return to hotel, stops at Horsetail falls (Pyramid Creek) or other points, as time and interest allows

Friday, August 16
8:30 am:
  Site Visit Group departs from Harvey's Hotel in Stateline, NV
morning:
  Tour of Caples Lake, Caples Creek area
lunch:
  at Silver Lake/Kirkwood, Ca
afternoon:
  Tour of Silver lake area, then Echo Lake area
4 pm:
  Leave for hotel 4:30 pm:—Arrive at hotel—end tour

This schedule is tentative and may change. If anyone would like to meet up with the site visit group for only a part of the site visit, please contact Ms. O'Brien in advance so that this can be arranged.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19037 Filed 7–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1932–004, 1933–010 and 1934–010]

Southern California Edison Company; Notice of Meeting To Discuss Section 10(j) and Endangered Species Act Issues

July 23, 2002.

a. *Date and Time of Meeting:* August 8, 2002, 9 a.m. Pacific Coast Time.

b. *Place:* Conference Call.

c. *FERC Contact:* Jon Cofrancesco at jon.cofrancesco@ferc.gov; (202) 219–0079.

d. *Purpose of Meeting:* Commission staff, the U.S. Fish and Wildlife Service, and the California Department of Fish and Game (CDFG) will discuss U.S. Department of the Interior's and CDFG's recommendations under Section 10(j) and any Endangered Species Act (ESA) issues for the Lytle Creek, Santa Ana River 1 & 3, and Mill Creek 2/3 Projects, P–1932–004, P–1933–010, and P–1934–010, respectively. Section 10(j) issues include water quality monitoring, minimum flows, fish screen, fish surveys and reports, Keller Creek diversion dam decommissioning, and adaptive management. The projects are located in San Bernardino County, California.

e. *Proposed Agenda:* 1. Introduction; 2. Recognition of Participants; 3. Meeting Procedures; 4. Section 10(j) issues discussion; 5. ESA Discussion; 6. Close Meeting

f. All local, state, and Federal agencies, Indian Tribes, and other interested parties are invited to join the conference call. Please call Jon Cofrancesco at (202) 219–0079 at least one day in advance for instructions on how to join the conference call.

g. *Procedural schedule:* The license applications will be processed

according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate:

Initiate 10(j) Process, May 7, 2002.

Notice of the availability of the final NEPA document, September 30, 2002.

Ready for Commission decision on the application, January 31, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19038 Filed 7–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11077–022 Alaska]

Goat Lake Hydro Inc.; Notice of Availability of Draft Environmental Assessment

July 23, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application for amendment of the license for the Goat Lake Hydroelectric Project, located on Pitchfork Falls, near the town of Skagway, in the First Judicial District, Alaska, and has prepared a Draft Environmental Assessment (DEA) for the project. The project occupies lands of the Tongass National Forest.

The DEA contains the staff's analysis of the potential environmental impacts of modifications to the project and concludes that amending the license for the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The DEA may be viewed on the web at *http://www.ferc.gov* (call (202) 208–2222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 11077–022 to all comments. Comments may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov.*

For further information, contact Michael Henry at (503) 944–6762.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19040 Filed 7–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To Prepare a Multi-Project Environmental Assessment and Notice of Paper Scoping and Soliciting Scoping Comments

July 23, 2002.

Take notice that the following hydroelectric applications have been filed with Commission and are available for public inspection:

a. *Type of Applications:* New Minor Licenses.

b. *Project Nos.:* Enterprise Mill Project, P–2935–015, Sibley Mill Project, P–5044–008.

c. *Dates filed:* Enterprise Mill Project, September 24, 2001, Sibley Mill Project, April 2, 2001.

d. *Applicants:* Enterprise Mill Project, Enterprise Mill, LLC, Sibley Mill Project, Avondale Mills Inc.

e. *Name of Projects:* Enterprise Mill Project, Sibley Mill Project.

f. *Location:* On the Augusta Canal about 5 and 6 miles downstream of the Augusta Canal diversion dam, adjacent to the Savannah River, Richmond County, Augusta, GA. The projects are two of three hydropower projects located in the Augusta Canal. The projects do not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)—825(r).

h. *Applicant Contact:* Enterprise Mill Project, Beth E. Harris, Project Engineer, CHI Energy, Inc., P.O. Box 8597, Greenville, SC 29604, (864) 281–9630; Sibley Mill Project, Mr. J. H. Vaughn, III Avondale Mills Inc., P.O. Box 128, Graniteville, SC 29829, (803) 663–2116.

i. *FERC Contact:* Monte TerHaar, (202) 219–2768 or *monte.terhaar@ferc.gov*.

j. *Deadline for filing scoping comments:* 30 days from issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. *Project Descriptions: Enterprise Mill:* The existing Enterprise Mill Hydroelectric Project consists of: (1) Intake works including two steel sliding, vertical lift intake gates; (2) primary and secondary steel trash racks; (3) two 300-foot-long, 8-foot-diameter penstocks; (4) two vertical shaft turbine/generator units with an installed capacity of 1.2 megawatts and a rated maximum discharge of 590 cfs, located inside the reinforced concrete and masonry Enterprise Mill structure; (5) an underground 350-foot-long tailrace, and open 500-foot-long tailrace section returning flow to the Augusta Canal, and (6) appurtenant facilities. There is no dam or impoundment, as approximately 580 cfs of water is withdrawn from the Augusta Canal when operating at full capacity. Developed head is approximately 30 feet. The applicant estimates that the annual generation would be between 5,000 and 8,000 megawatthours (MWh). Generated power is utilized within the applicant's Enterprise Mill which houses residential and commercial tenants, and excess power will be sold to Georgia Power Company. No new facilities are proposed.

Sibley Mill: The existing Sibley Mill Project consists of: (1) Intake works including four steel diversion gates on a 50-foot-long by 15-foot-high intake structure equipped with 1-inch trashracks; (2) a concrete headrace 290 feet long, 42 feet wide, and 15 feet deep; (3) a brick powerhouse; (4) three vertical shaft Francis turbine/generator units with an installed capacity of 2.475 MW; (5) an open tailrace 350 foot long, 30 feet wide, and 38 feet deep; and (6) appurtenant facilities. There is no dam or impoundment, as approximately 936 cfs of water is withdrawn from the Augusta Canal when operating at full capacity. The applicant estimates that the total average annual generation would be 11,000 MWh. All generated power is utilized within the industrial manufacturing facility in the Sibley Mill. No new facilities are proposed.

m. A copy of the application is on file with the Commission and is available

for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

n. *Scoping Process:* Scoping is intended to advise all parties regarding the proposed scope of the EA and to seek additional information pertinent to this analysis. The Commission intends to prepare one Environmental Assessment (EA) for the Enterprise Mill Project and Sibley Mill Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action. Should substantive comments requiring reanalysis be received on the NEPA document, we would consider preparing a subsequent NEPA document.

At this time, the Commission staff does not anticipate holding formal public or agency scoping meetings near the project site. Instead, staff will conduct paper scoping.

A Scoping Document (SD) outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

As part of scoping the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from comments all available information, especially quantifiable data, on the resources at issue; (3) encourage comments from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Consequently, interested entities are requested to file with the Commission any data and information concerning environmental resources and land uses in the project area and the subject project's impacts to the aforementioned.

O. The preliminary schedule for preparing the subject EA is as follows:

Milestone	Target date
Issue Scoping Document 1 (Paper Scoping).	July/August 2002.
Additional Information (if needed).	October 2002.
Issue Acceptance Letter.	October 2002.
Issue Notice of Ready for Environmental Analysis.	December 2002.
Deadline for Filing Agency Recommendations.	February 2003.
Issue Notice of availability of EA.	April 2003.
Public Comments on EA Du.	May 2003.
Initiate 10(j) Process	June 2003.
Ready for Commission decision on the application.	September 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19039 Filed 7–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-2004 Resource Pool-Salt Lake City Area Integrated Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of adjustment to final allocations.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), announces an adjustment to its Salt Lake City Area Integrated Projects (SLCA/IP) Post-2004 Resource Pool Final Allocation of Power developed under the requirements of Subpart C—Power Marketing Initiative of the Energy Planning and Management Program (Program) Final Rule. Final allocations were published in the **Federal Register** on February 4, 2002. Information received since then has made it necessary to revise the allocations.

Adjusted final allocations are published to indicate Western's decisions prior to beginning the contractual phase of the allocation process. Firm electric service contracts, negotiated between Western and allottees, will permit delivery of power allocations from the October 2004 billing period through the September 2024 billing period.

DATES: The Adjusted Post-2004 Resource Pool Final Allocation of Power will become effective August 28, 2002, and will remain in effect through September 30, 2024.

ADDRESSES: All documents developed or retained by Western in developing the adjusted final allocations are available for inspection and copying at the CRSP Management Center, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111.

SUPPLEMENTARY INFORMATION: Western published Final Post-2004 Resource Pool Allocation Procedures (Procedures) in the **Federal Register** (64 FR 48825, September 8, 1999) to implement Subpart C-Power Marketing Initiative of the Program's Final Rule (10 CFR part 905), published in the **Federal Register** (60 FR 54151, October 20, 1995). The Program, developed in part to implement Section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995. The goal of the Program is to require planning and efficient electric energy use by Western's long-term firm power customers and to extend Western's firm power resource commitments. One aspect of the Program is to establish project-specific power resource pools and allocate power from these pools to new preference customers.

The Procedures, in conjunction with the Post-1989 Marketing Plan (51 FR 4844, February 7, 1986), establish the framework for allocating power from the SLCA/IP Post-2004 Power Pool.

Proposed allocations were published in the **Federal Register** (66 FR 31910, June 13, 2001). Public information/comment forums concerning the proposed allocations were held August 10, 15, 16, 21, and October 4, 2001. The public comment period closed October 11, 2001.

Final allocations were published in the **Federal Register** (67 FR 5113, February 4, 2002). Information received by Western since that date has indicated that misinterpretation of data by Western made it necessary to adjust these allocations.

I. Reason for Adjustment

Following publication of the final allocations, Western received information indicating that because of errors made in evaluating the data used to calculate the final allocations, three tribes' allocations were incorrect. Western has stated in the criteria that it would be consistent in determining the allocations of all tribes. It is necessary to adjust the allocations to correct these errors. The first of these is the San Carlos Apache Tribe (San Carlos). The San Carlos Apache Reservation is served by three utilities. Only one of these utilities currently receives Federal

power that is used to serve the reservation. In calculating the allocation for San Carlos, the percentage of Federal power received by this utility was applied to San Carlos's total load. The result of this calculation was that San Carlos received a smaller allocation than it should have.

The second adjustment made was to the allocation of the Yavapai Prescott Tribe. The non-residential load information submitted with the Applicant Profile Data by Yavapai Prescott was misinterpreted resulting in only two commercial accounts being identified as tribally-owned and thus eligible for an allocation. However, a number of other tribal businesses, administrative offices, and eligible loads should have been included. These loads have been identified, and an adjustment made to Yavapai Prescott's allocation.

The third allottee to identify a problem was the Tohono O'odham Utility Authority (TOUA). TOUA is a tribal utility which currently receives an allocation of Federal power. The information available to Western and used to determine the percentage of TOUA's load served by its present Federal allocation was shown to be incorrect. This resulted in TOUA receiving a lower level of service in 2004 than other tribes. TOUA's allocation was adjusted by using the correct percentage of current Federal power in the calculations.

To maintain consistency in its treatment of all tribes Western believes it is necessary to make these corrections. Since the entire resource pool has been allocated, any adjustment to an allocation results in all of the allocations being changed. The result of these adjustments is that other tribes' allocations are reduced slightly from the previously published amounts. With these adjustments, the tribes' SLCA/IP allocations, combined with existing and future Western hydropower benefits, were reduced slightly to approximately 55.2 percent of eligible load in the Summer season and 57.2 percent in the Winter season based on the adjusted seasonal energy data submitted by each tribe.

Another result of recalculating the allocations is that the Kiabab Paiute Tribe (Kiabab) will not receive an allocation. The utility which serves Kiabab receives a greater portion of its power supply through its allocation than Western is able to provide to the Tribes.

II. Final Power Allocation

Since the proposed allocations were published in June 2001 and subsequently in February 2002, tribes have had sufficient time to review the allocations and point out any inconsistencies with the criteria. The following final power allocations are made in accordance with the Procedures. All of the allocations are subject to the execution of a firm electric service contract in accordance with the Procedures. Western will proceed to offer firm electric service contracts to the tribes receiving allocations in the amounts shown below.

The adjusted final allocations for Indian tribes and organizations are shown in this table.

SALT LAKE CITY AREA PROJECTS POST-2004 POWER POOL FINAL ALLOCATIONS

Tribe	Summer energy (kWh)	Winter energy (kWh)	Summer CROD (kW)	Winter CROD (kW)
Alamo Navajo Chapter	399,824	453,518	184	196
Canoncito Navajo Chapter	292,937	335,242	135	145
Cocopah Indian Tribe	2,779,230	2,454,829	1,281	1,058
Colorado River Indian Tribes	12,969,838	8,747,829	5,978	3,772
Confederated Tribes of the Goshute Reservation	84,952	144,200	39	62
Duckwater Shoshone Tribe	149,225	156,069	69	67
Ely Shoshone Tribe	168,395	299,306	78	129
Fort Mojave Indian Tribe	612,855	631,886	282	272
Ft. McDowell Mojave-Apache Indian Community	5,089,153	5,263,924	2,346	2,270
Gila River Indian Community	30,202,512	30,918,295	13,920	13,330
Havasupai Tribe	432,433	548,898	199	237
Hopi Tribe	5,892,469	6,517,369	2,716	2,810
Hualapai Tribe	1,357,114	1,411,736	625	609
Jicarilla Apache Tribe	1,257,753	1,703,852	580	735
Las Vegas Paiute Tribe	1,563,305	1,213,043	721	523
Mescalero Apache Tribe	2,116,562	2,295,175	976	990
Nambe Pueblo	126,990	151,509	59	65
Navajo Tribal Utility Authority	45,155,581	56,535,996	20,812	24,375
Paiute Indian Tribe of Utah	343,334	357,388	158	154
Pascua Yaqui Tribe	2,864,577	2,393,821	1,320	1,032
Picuris Pueblo	164,296	51,199	76	22
Pueblo De Cochiti	401,422	520,585	185	224
Pueblo of Acoma	911,224	950,635	420	410
Pueblo of Isleta	2,381,563	2,572,647	1,098	1,109
Pueblo of Jemez	464,155	613,561	214	265
Pueblo of Laguna	1,610,018	1,745,884	742	753
Pueblo of Pojoaque	451,379	628,599	208	271
Pueblo of San Felipe	711,597	977,634	328	422
Pueblo of San Ildefonso	136,791	148,335	63	64
Pueblo of San Juan	647,460	702,893	298	303
Pueblo of Sandia	2,045,141	1,894,685	943	817
Pueblo of Santa Clara	463,973	613,363	214	264
Pueblo of Santo Domingo	980,004	1,016,679	452	438
Pueblo of Taos	480,420	787,815	221	340
Pueblo of Tesuque	1,361,547	1,387,845	628	598
Pueblo of Zia	148,471	196,276	68	85
Pueblo of Zuni	2,212,186	2,748,632	1,020	1,185
Quechan Indian Tribe	1,095,632	1,691,226	505	729

SALT LAKE CITY AREA PROJECTS POST-2004 POWER POOL FINAL ALLOCATIONS—Continued

Tribe	Summer energy (kWh)	Winter energy (kWh)	Summer CROD (kW)	Winter CROD (kW)
Ramah Navajo Chapter	650,681	954,717	300	412
Salt River Pima-Maricopa Indian Community	35,026,125	31,034,316	16,144	13,380
San Carlos Apache Tribe	9,008,264	8,766,824	4,152	3,780
Santa Ana Pueblo	997,747	950,995	460	410
Skull Valley Band of Goshute Indians	33,098	34,336	15	15
Southern Ute Indian Tribe	2,435,344	2,723,333	1,122	1,174
Tohono O'Odham Utility Authority	2,270,947	7,060,054	1,047	3,044
Tonto Apache Tribe	829,541	810,134	382	349
Ute Indian Tribe	991,484	1,596,382	457	688
Ute Mountain Ute Tribe	1,034,236	1,177,682	477	508
White Mountain Apache Tribe	12,632,129	13,914,290	5,822	5,999
Wind River Reservation	1,050,627	1,138,890	484	491
Yavapai Apache Nation	4,106,724	3,399,015	1,893	1,465
Yavapai Prescott Indian Tribe	1,589,784	1,867,486	733	805
Yomba Shoshone Tribe	68,129	70,678	31	30
Total	203,251,178	217,281,509	93,679	93,680

IV. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–621, requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

V. Environmental Compliance

Western has completed an environmental impact statement on the Program, pursuant to the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in the **Federal Register** (60 FR 53181, October 12, 1995). Western's NEPA review assured all environmental effects related to these procedures have been analyzed.

VI. Determination 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, this notice requires no clearance by the Office of Management and Budget.

VII. Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: July 5, 2002.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 02–19070 Filed 7–26–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7251–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Waste Minimization Partnership Program; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: The EPA published a document in the **Federal Register** of June 21, 2002, concerning a proposed information collection request for the National Waste Minimization Partnership Program.

FOR FURTHER INFORMATION CONTACT: Newman Smith, 703–308–8757.

SUPPLEMENTARY INFORMATION: The EPA published a document in the **Federal Register** of June 21, 2002, (67 FR 42251), in FR Doc. 02–15725. This document corrects the docket number in the **ADDRESSES** section in the second and third column of page 42251 to read ''RCRA–2002–0022''; and also corrects the docket address in the second column to read: RCRA Docket Information Center, Office of Solid Waste (5305G) U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

Dated: July 19, 2002.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 02–19106 Filed 7–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2001–2; FRL–7252–1]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Dougherty County Landfill, Flemming/Gaissert Road Facility; Albany (Dougherty County), GA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order, dated July 3, 2002, denying a petition to object to a state operating permit issued by the Georgia Environmental Protection Division (EPD) to Dougherty County Landfill, Flemming/Gaissert Road Facility (Dougherty) located in Albany, Dougherty County, Georgia. This order constitutes final action on the petition submitted by the Georgia Center for Law in the Public Interest (GCLPI or Petitioner) on behalf of the Sierra Club. Pursuant to section 505(b)(2) of the Clean Air Act (the Act) any person may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this document under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/dougherty_decision2001.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and, as appropriate, object to operating permits proposed by state permitting authorities under title V of the Act, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

GCLPI submitted a petition on behalf of the Sierra Club to the Administrator on August 22, 2001, requesting that EPA object to a state title V operating permit issued by EPD to Dougherty. The Petitioner maintains that the Dougherty permit is inconsistent with the Act because of: (1) Inadequate reporting requirements related to monitoring; (2) the permit's apparent limitation of enforcement authority; (3) inadequate public notice procedures; and (4) the permit's apparent limitation of credible evidence.

On July 3, 2002, the Administrator issued an order denying this petition. The order explains the reasons behind EPA's conclusion that the Petitioner has failed to demonstrate that the Dougherty permit is not in compliance with the requirements of the Act on the grounds raised.

Dated: July 19, 2002.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 02–19107 Filed 7–26–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 22, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 27, 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 or Leslie Smith, Federal Communications Commission, Room 1-C804 or Room 1-A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@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–XXXX.

Title: Radar Detectors Operating Under Part 15.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, and state, local or tribal governments.

Number of Respondents: 8.

Estimated Time Per Response: 2 hours.

Frequency of Response: One time reporting requirement; third party disclosure requirement.

Total Annual Burden: 16 hours.

Total Annual Cost: $2,000.

Needs and Uses: The collection of information is made necessary by changes to part 15 of the Commission's Rules that require that all radar detectors to be certified to demonstrate compliance with certain radiated emission limits before they can be marketed. To assist in identifying products manufactured before and after a certain date on which certification is required. Radar detector manufacturers will be required to provide the Commission with a list of radar detector serial numbers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19062 Filed 7–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–46–B (Auction No. 46); DA 02–1628]

Auction No. 46 Revised License Inventory and Auction Start Date; Comment Sought on Revisions to Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document revises the license inventory and starting date for Auction No. 46. This document also seeks comment on revisions to the Bureau's proposed procedures for Auction No. 46. With the exception of the changes described in the *Auction No. 46 Revised License Inventory and Auction Start Date Public Notice,* the Bureau's proposed procedures for Auction No. 46 remain unchanged from the *Auction No. 46 Comment Public Notice* released on May 24, 2002.

DATES: Comments were due on or before July 22, 2002, and reply comments are due on or before July 29, 2002.[1]

ADDRESSES: Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires

[1] This document was received by the Office of the Federal Register on July 25, 2002.

that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction46@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: For legal questions: Francis Gutierrez (202) 418–0660. For general auction questions: Lyle Ishida (202) 418–0660 or Lisa Stover (717) 338–2888. For service rule questions: Brian Marenco (202) 418–0838.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 46 Revised License Inventory and Auction Start Date Public Notice* released on July 15, 2002. The complete text of the *Auction No. 46 Revised License Inventory and Auction Start Date Public Notice* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. The *Auction No. 46 Revised License Inventory and Auction Start Date Public Notice* 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.*

Revised Auction No. 46 License Inventory

1. The *Auction No. 46 Comment Public Notice*, 67 FR 42773 (June 25, 2002), announced that Auction No. 46 would include licenses in the paired 1392–1395 and 1432–1435 MHz bands and in the unpaired 1390–1392 MHz, 1670–1675 MHz, and the 2385–2390 MHz bands. The Auction No. 46 license inventory has been revised and only the 1670–1675 MHz band nationwide license will be offered in Auction No. 46. Dates for the auction of licenses in the paired 1392–1395 and 1432–1435 MHz bands and the unpaired 1390–1392 MHz and 2385–2390 MHz bands will be announced by separate public notice.

New Auction Start Date

2. Auction No. 46 will begin on October 30, 2002. A complete list of all relevant dates for the auction will be provided in a subsequent public notice.

Activity Rules

3. In order to ensure that the auction closes within a reasonable period of time, the Commission establishes activity rules that require bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than wait until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

4. In the *Auction No. 46 Comment Public Notice* the Bureau proposed to divide Auction No. 46 into three stages, each characterized by an increased activity requirement. However, in light of the reduction in the number of licenses that will be available in Auction No. 46, the Bureau proposes a single stage auction with the following activity requirement: in each round, a bidder desiring to maintain eligibility to participate in the auction is required to be active on one hundred (100) percent of its bidding eligibility. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain; if a bidder has no activity rule waivers remaining, its eligibility will be reduced, effectively eliminating the bidder from the auction. The Bureau seeks comment on this proposal.

Activity Rule Waivers and Reducing Eligibility

5. In the *Auction No. 46 Comment Public Notice* the Bureau proposed that each bidder be provided with five activity rule waivers. The Bureau believes that in a single stage auction of one license, it will not be necessary to allow five activity rule waivers. Therefore the Bureau proposes to limit each bidder to two activity rule waivers that may be used at the bidder's discretion during the course of the auction, as described in the *Auction No. 46 Comment Public Notice.* The Bureau seeks comment on this proposal.

Information Regarding Bid Withdrawal

6. In the *Auction No. 46 Comment Public Notice* the Bureau proposed to limit each bidder to withdrawing standing high bids in no more than two rounds during the course of the auction. As noted in the *Auction No. 46 Comment Public Notice*, the Commission has previously explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. In Auction No. 46, however, aggregation of licenses will not be possible because only a single license will be auctioned. Accordingly, for this auction, the Bureau proposes that bidders not be permitted to withdraw bids in any round. The Bureau seeks comment on this proposal.

Conclusion

7. Comments are due on or before July 22, 2002, and reply comments are due on or before July 29, 2002. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction46@fcc.gov.* The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 46 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

8. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte rules.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.

Federal Communication Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–19177 Filed 7–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2563]

Petitions for Reconsideration of Action in Rulemaking Proceedings

July 17, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing

and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by August 13, 2002. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies on an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of FM Table of Allotments (MM Docket No. 00–245, RM–9971, RM–10185, RM–10186).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19063 Filed 7–26–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2564]

Petitions for Reconsideration of Action in Rulemaking Proceedings

July 22, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by August 13, 2002. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the matter of implementation of Sections of the Communications Act of 1934 as Amended (WT Docket No. 99–87).

Number of Petitions Filed: 1.

Subject: In the matter of telecommunications relay services and speech-to-speech services for individuals with hearing and speech disabilities (CC Docket No. 98–67).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19064 Filed 7–26–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

1. *Type of Review:* Renewal of a currently approved collection.

Title: Notification of Performance of Bank Services.

OMB Number: 3064–0029.

Form Number: 6120/06.

Annual Burden:

Estimated annual number of respondents: 412.

Estimated time per response: ½ hour.

Total annual burden hours: 206 hours.

Expiration Date of OMB Clearance: August 31, 2002.

Supplementary Information: Insured state nonmember banks are required to notify the FDIC, under section 7 of the Bank Service Company Act (12 U.S.C. 1867), of the relationship with a bank service company. Form FDIC 6120/06 (Notification of Performance of Bank Services) may be used by banks to satisfy the notification requirement.

2. *Type of Review:* Renewal of a currently approved collection.

Title: Prompt Corrective Action.

OMB Number: 3064–0115.

Annual Burden:

Estimated annual number of respondents: 10.

Estimated time per response: 4 hours.

Total annual burden hours: 40 hours.

Expiration Date of OMB Clearance: August 31, 2002.

Supplementary Information: The prompt corrective action provisions of section 38 of the Federal Deposit Insurance Act require or permit the FDIC and other federal financial regulators to take certain supervisory actions when FDIC-insured institutions fall within one of five categories. The collection consists of applications to otherwise restricted activities.

OMB Reviewer: Joseph Lackey, (202) 395–4741, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Legal Division, Room MB–3109, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted on or before August 28, 2002, to both the OMB reviewer and the FDIC contact listed above.

Addresses: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed above.

Dated: July 23, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–19067 Filed 7–26–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1424–DR]

Montana; Amendment No. 1 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 Montana (FEMA–1424–DR), dated July 3, 2002, and related determinations.

EFFECTIVE DATE: June 21, 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 21, 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. 02–19056 Filed 7–26–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1424–DR]

Montana; Amendment No. 2 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 Montana, (FEMA–1424–DR), dated July 3, 2002, and related determinations.

EFFECTIVE DATE: July 19, 2002.

FOR FURTHER INFORMATION CONTACT: Rich 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 Montana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 3, 2002:

Hill County for Public 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. 02–19057 Filed 7–26–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; 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 declaration for the State of Texas, (FEMA–1425-DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Rich 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 Texas 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 July 4, 2002:

Burnet and Coleman Counties for Public Assistance.

Atascosa, Brown, Callahan, Eastland, Goliad, Guadalupe, LaSalle, Taylor, and Wilson Counties for Public Assistance (already designated for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 U.S.C. 5174).

Comal County for Categories C through G under the Public Assistance Program (already designated for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 U.S.C. 5174 and Categories A and B under the Public Assistance program).

Nueces County for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 U.S.C. 5174.

(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. 02–19058 Filed 7–26–02; 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 August 12, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. L&T Investment Limited Partnership, Greenbrier, Arkansas; to acquire voting shares of First Service Bancshares, Inc., Dermott, Arkansas, and thereby indirectly acquire voting shares of First Service Bank, Greenbrier, Arkansas.

Board of Governors of the Federal Reserve System, July 23, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–19045 Filed 7–26–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be

obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 22, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. FBOP Corporation, Oak Park, Illinois; to acquire American Home Loan Corporation, Phoenix, Arizona, and thereby indirectly inquire Bank USA, a Federal Savings Bank, Phoenix, Arizona, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

2. Southwest Company, Oakland, Iowa; to acquire Fremont County Savings Bank, Sidney, Iowa; and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 23, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–19044 Filed 7–26–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02138]

Technology Transfer of a Community-level Intervention for Young Men at Risk for HIV Infection; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Technology Transfer of a Community-level Intervention for Young Men at Risk for HIV Infection. This program addresses the ''Healthy People 2010'' focus dealing with HIV and AIDS prevention.

The purpose of the program is to implement an HIV prevention, community level intervention in locations that served as comparison communities in research funded through the previous Program Announcement 96001.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for Human Immunodeficiency Virus, Sexually Transmitted Disease and Tuberculosis (HIV, STD, & TB Prevention). Through the implementation of HIV prevention programs, reduce the number of cases of HIV infection and AIDS: 1. Acquired heterosexually, 2. related to injecting drug use, 3. associated with male-to-male homosexual contact, and 4. acquired perinatally.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317 (k)(2) of the Public Health Service Act, 42 U.S.C. section 241. The Catalog of Federal Domestic Assistance number is 93.943.

C. Eligible Applicants

Eligibility is limited to organizations (identified in this announcement as lead organizations) that were collaborative partners, or served as part of the local advisory group, in the comparison communities for the HIV prevention research study funded under Program Announcement 96001. Listed are eligible organizations located in the following communities: Atlanta, Georgia—AID Atlanta, AIDS Education Services for Minorities, Brothers Back to Back, Fulton County Health Department, Second Sunday, State of Georgia, Department of Health, STD/HIV Division (in Decatur, Georgia), and Unity Fellowship Church; Detroit, Michigan—Midwest AIDS Prevention Project (in Ferndale, Michigan); Minneapolis, Minnesota—The Bridge for Runaway Youth, The City, Inc., District 202, Face to Face Health and Counseling Services, Inc. (in Saint Paul, Minnesota), HIM Program—Red Door Clinic, Lutheran Social Services, Minnesota AIDS Project, Out4Good, Out for Equity (in Saint Paul, Minnesota), Pillsbury House, Project Solo, and Youth Link (formerly Minneapolis Youth Diversion); Queens (Jackson Heights), New York City, New York—Hispanic AIDS Forum; San Diego, California—Asian Pacific Islander Community AIDS Project and Gay and Lesbian Center; San Gabriel Valley, California—AltaMed, Bienestar, Community Health Foundation, The Wall-Los Memorias, and Whittier-Rio Hondo.

Universities and research organizations are not eligible for funding as a lead organization but can be part of the collaborative team.

In addition, eligible applicants must meet the following criteria:

(1) Where applicable, must target the following racial/ethnic populations: Asian and Pacific Islanders(San Diego); African-Americans (Atlanta); Latinos/Hispanics (Queens [Jackson Heights]; San Gabriel Valley).

(2) Must have an agreement to collaborate with the investigator on the proposed program as evidenced by a letter of support.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Approximately $1.2 million is available in FY 2002 to fund approximately six awards. It is expected that the average award will be $200,000, ranging from $150,000 to $250,000. It is expected that the awards will begin on or about September 16, 2002 and will be made for a 12-month budget period.

Although applicants are encouraged to contract with other organizations under these cooperative agreements, applicants must perform a substantial portion of the activities (including program management and operations) for which funds are requested.

Funding Preferences

Each applicant may submit only one application and the intent is to fund one award in each of the specified communities, therefore applicants from the same geographic area are encouraged to collaborate.

Matching funds is not a requirement for this program announcement.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Establish a collaborative team of prevention service providers and other community partners to implement a multi-component HIV prevention intervention for young men (aged 15–25) who have sex with men (YMSM). The collaborative team should consist of the organizations that will jointly implement intervention activities for YMSM. The collaborative team will include a lead organization, a researcher that was previously funded through Program Announcement 96001, and at least one other community organization. The lead organization and other collaborating organizations may be state or local health departments, community-based organizations, AIDS service organizations, or other social service organizations, and organizations

affiliated with the state/local Community Planning Group (CPG).

b. Participate in a planning process that will involve a review of interventions that have been found to be effective for YMSM, selection of intervention activities that will be implemented jointly by the organizations in the collaborative team, and tailoring of the intervention protocols to the context of the community. The collaborative teams should consider interventions identified in the state/local Comprehensive HIV Prevention Plans but should also consider interventions that have been identified by CDC as effective for this population that may not be mentioned in a state/local plan. All activities supported under this announcement must be consistent with the goals of the state/local Comprehensive HIV Prevention Plan.

c. Implement the HIV prevention intervention for YMSM. This may involve any or all of the following activities: peer outreach, social marketing, social events with an HIV prevention theme, and small group workshops.

d. Collaborate with academic or other appropriate institutions to develop and implement a plan for evaluating program activities.

e. Establish mechanisms with other public and/or private groups to maintain support for the program at the conclusion of federal support.

f. Collaborate with appropriate partners to inform, and educate state and local CPG's, other HIV prevention providers and researchers regarding the experiences and lessons learned in technology transfer of the selected intervention activities for YMSM in these communities.

g. Collaborate with appropriate partners to inform and educate others regarding the experiences and lessons learned from the project.

2. CDC Activities

a. Provide up to date information and recommendations on effective intervention strategies for YMSM.

b. Provide consultation and technical assistance in the planning and evaluation of program activities.

c. Monitor recipient performance of program activities and compliance with other requirements.

d. Identify mechanisms for disseminating lessons learned from the project.

F. Content

Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins, and twelve point fonts. The 25 pages does not include the budget or appendices.

G. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 [(OMB Number 0920–0428) (adhere to the instructions on the Errata Instruction Sheet for PHS 398)]. Forms are at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms may also be obtained by contacting the Grants Management listed in the ''Where to Obtain Additional Information'' section of this announcement. Forms may not be submitted electronically.

On or before August 28, 2002, submit the application to the: Technical Information Management Section, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are: Received on or before the deadline date.

Late Applications: Applications which do not meet the criteria above will be returned to the applicant.

H. Evaluation Criteria

Application

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals)as stated in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

(1) Intervention implementation plan (30 points)

a. The applicant should describe the planning process for reviewing HIV prevention interventions that have shown evidence of effectiveness, and selecting intervention activities for their community. The planning process should include strategies for tailoring the planned intervention to the target population and the community context.

b. The applicant should provide a plan for implementing, with members of the collaborative team and community members, the selected HIV prevention intervention for young men who have sex with men. This intervention may include any or all of the following activities: Peer outreach, social marketing, social events with an HIV prevention theme, small group workshops, and capacity-building. Applicants are encouraged to improve existing services with proven effective prevention programs in order to enhance the sustainability of the effort.

c. The proposed implementation plan should include overall goals and specific objectives that are time-phased, measurable, realistic, and related to the proposed goals.

d. A time line of planned program activities should be included in the appendix for this section. The time line should allow for a planning process of at least three but no more than six months prior to intervention implementation.

e. The applicant should provide a plan for sustaining the intervention beyond the federal funding period, including potential alternate sources of funding.

(2) Organizational capacity of lead agency (25 points)

a. The applicant should describe experience conducting HIV prevention activities directly with the target population, or as part of a coalition or collaborative team working with the target population, for at least two of the previous four years in the selected community.

b. The applicant should describe the staffing plan for the proposed program. At a minimum, staffing should include a full-time program coordinator, a full-time peer outreach coordinator, and a part-time program assistant. Except for the program coordinator, some of these positions may be housed within other coalition members' organizations.

c. The applicant should provide descriptions of any other collaborative ventures within the past four years, and document the accomplishments of those collaborations.

(3) Collaborative Team (25 points)

a. The applicant must describe the members of the collaborative team by type of organization and relative organizational experience. (At a minimum, the collaborative team should include at least the lead agency, the original researcher funded under

Cooperative Agreement 96001, and at least one other community organization). The applicant should be able to show strong representation by the targeted YMSM population in the collaborative team.

b. The applicant should provide evidence of an established relationship with one of the investigators funded under Cooperative Agreement 96001 and/or an agreement to collaborate with the researcher on this program as evidenced by a letter of support. The applicant should describe the specific role the researcher will perform in the implementation and evaluation of the intervention.

c. Signed letters of support or other official documentation (e.g., memorandum of agreement) of the relevant collaboration should be appended to the document but not included in this section of the narrative.

(4) Evaluation Plan (10 points)

a. Applicant should provide a description of the evaluation and monitoring process that the applicant will use to track and measure program progress.

b. An evaluation plan should be provided that includes time-phased, specific, and measurable objectives that account for the major activities of the intervention implementation plan, and any other relative process measures.

(5) Dissemination of Lessons Learned (10 points)

The applicant should describe how successful approaches and lessons learned will be shared with other organizations.

(6) Budget (not scored)

The applicant should provide a line-item budget with a detailed narrative justification that is consistent with the purpose and objectives of this cooperative agreement.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Quarterly progress reports;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial and performance reports, no more than 90 days after the end of the project period.
4. Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–4 HIV/AIDS Confidentiality Provisions

AR–5 HIV Program Review Panel Requirements

AR–7 Executive Order 12372 Review

AR–8 Public Health System Reporting Requirements

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–14 Accounting System Requirements

AR–15 Proof of Non-Profit Status

AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To obtain business management technical assistance, contact: Lynn Mercer, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2810, Email address: *lzm2@cdc.gov*.

For program technical assistance, contact: Craig Studer, Behavioral Intervention Research Branch, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS E–37, Atlanta, GA 30333, Telephone number: (404) 639–1900, Email address: *ccs1@cdc.gov*.

Dated: July 23, 2002.

Edward J. Schultz,

Deputy Director, Procurement and Grants Office, Centers for Disease Control Prevention.

[FR Doc. 02–19061 Filed 7–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02179]

National Environmental Public Health Tracking Program; Notice of Availability of Funds

Addendum

A notice announcing the availability of Fiscal Year (FY) 2002 funds for a cooperative agreement program to support development of a National Environmental Public Health Tracking Program was published on July 18, 2002, Volume 67, Number 138, pages 47371–47381. The following appendix is added to this announcement: Appendix V.

The Agency for Toxic Substances and Disease Registry (ATSDR) has also recently released a request for proposals ''Linking Chronic Disease and Environmental Data Sources''. This is separate from CDC Environmental Public Health Tracking Program announcements PA02179, and PA02180 (Centers for Excellence in Environmental Public Health Tracking). ATSDR will fund two to three projects. The purpose of these projects are to conduct research on the potential impact of environmental exposures on chronic disease outcomes. If interested in learning more about this other funding opportunity, applicants should refer to ATSDR's announcement which is posted on CDC's Web site at: *http://www.cdc.gov/od/pgo/funding/02155.htm.* CDC and ATSDR have been collaborating on their respective announcements and will continue to coordinate these activities at the Federal level.

In future years, CDC's announcement (PA02179) and ATSDR's announcement (PA02155) will be combined and all activities will be included in one announcement. Therefore, applicants should be aware of the criteria in both announcements. For example, criteria on developing systems that are compatible with NEDSS, Bioterrorism, and EPA's National Environmental Information Exchange Network will be critical for all aspects of tracking.

For more information, CDC has introduced a new environmental public health tracking Web site. It can be accessed at: *www.cdc.gov/nceh/tracking.*

Dated: July 23, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–19060 Filed 7–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: DHHS/ACF Employment Retention and Advancement (ERA) Evaluation 12-Month Survey.

OMB No.: New collection.

Description: The Employment Retention and Advancement (ERA) Evaluation is the most ambitious, comprehensive effort to learn what works in this area to date and is explicitly designed to build on past research by rigorously testing a wide variety of approaches to promoting employment retention and advancement for a range of populations. The project, conceived and sponsored by the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services (HHS), seeks to ''conduct a multi-site evaluation that studies the net impact and cost-benefits of programs designed to help Temporary Assistance for Needy Families (TANF) recipients, former TANF recipients, or families at-risk of needing TANF benefits retain and advance in employment.'' The ERA Evaluation involves up to 15 random assignment experiments in eight states, testing a diverse set of strategies designed to promote stable employment and/or career advancement for current and former welfare recipients and/or career advancement for current and former welfare recipients and other low-income parents. Over the next several years, the ERA project will generate a wealth of rigorous data on the implementation, effects, and costs of these alternative approaches. The data collected will be used for the following purposes:

- To study ERA's impacts on employment, earnings, participation, educational attainment and income;
- To collect data on a wider range of outcome measures than is available through welfare or UI records in order to understand how individuals were affected by ERA; job retention and job quality; educational attainment; interactions with an knowledge of the ERA program; household composition; income; and childcare, transportation, and health coverage;
- To supplement research on the implementation of ERA across sites;
- To conduct non-experimental analyses to explain participation decisions and provide a descriptive picture of the circumstances of low-wage workers;
- To obtain participation information important to the evaluation's benefit-cost component; and
- To obtain contact information for possible future follow-up, information that will be important to achieving high response rates for the 36-month survey.

Respondents: The respondents of the 12-month survey are Temporary Assistance for Needy Families (TANF) applicants, current and former TANF recipients, or individuals in families at-risk of needing TANF benefits (working poor and hard-to-employ) from eight states participating in the ERA Evaluation: California, Oregon, New York, Ohio, Minnesota, Illinois, South Carolina, and Texas. Survey respondents can be grouped according to three program clusters: advancement projects; placement and retention (hard-to-employ) projects; and mixed goal projects. All three program clusters will receive the 12-month core survey. The placement and retention (hard-to-employ) participants will also receive the hard-to-employ survey module. Survey participants will be administered a telephone survey (for those individuals who cannot be reached by phone, staff at the survey firm will attempt to contact them in person) approximately 12 months after random assignment. Approximately 6,250 participants will complete the core survey only and 1,800 participants will complete the core plus hard-to-employ module survey.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
12-Month Survey (Core Only)	3,125	1	37 minutes or .6166 hours	1,927.08
12-Month Survey (Core plus Hard-to-Employ Module).	900	1	45 minutes or .75 hours	675.00
Estimated Total Annual Burden Hours				2,602.08

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: July 24, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–19071 Filed 7–26–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Request for Public Comment on the Reporting Period for the National Child Abuse and Neglect Data System

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Notice of request for public comment.

SUMMARY: The Children's Bureau, in the Administration on Children, Youth and Families administers the National Child Abuse and Neglect Data System (NCANDS), through which States collect and report data on child maltreatment. The Children's Bureau (CB) uses these data as a basis for States' conformity with title IV–B and IV–E State plan requirements as determined by a Child and Family Services (CFS) Review, among other purposes. States reviewed in 2001 noted a number of concerns when NCANDS data were used in this manner. Specifically, States and ACF experienced difficulty with interpreting NCANDS data because they are reported on a calendar year basis, while the reporting period for the other primary data source for the CFS Reviews, the Adoption and Foster Care Analysis and Reporting System (AFCARS), is a Federal fiscal year. CB is proposing a change in the NCANDS reporting period to address this issue. The Administration on Children and Families invites comments from States and other interested parties regarding the NCANDS reporting period.

DATES: Written comments must be submitted to the office listed in the ADDRESSES section below on or before August 28, 2002.

ADDRESSES: E-mail written comments to John Gaudiosi, Children's Bureau, at *jgaudiosi@acf.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: John Gaudiosi, Mathematical Statistician, Children's Bureau, *jgaudiosi@acf.hhs.gov* or 202–205–8625.

SUPPLEMENTARY INFORMATION:

NCANDS Background

Public Law 100–294 amended the Child Abuse Prevention and Treatment Act (CAPTA) [42 U.S.C. 5101 *et seq.*] and directed the Secretary of the Department of Health and Human Services to establish a national data collection and analysis program on child abuse and neglect. The Department responded by establishing the NCANDS as a voluntary national reporting system. States report aggregate summary data and detailed case-level such as the number of children abused and neglected, the types of abuse, the number of fatalities due to maltreatment, and the types of services provided to address maltreatment and prevent future abuse. Public Law 104–235 further amended CAPTA to establish that States that participate in NCANDS and receive the Basic State Grant would work with the Secretary to provide, to the maximum extent practicable, a report that includes several data items, including the number of children reported as abused or neglected; the number that did or did not receive services; the number removed from their families during the year; the number of families that received preventive services; the number of deaths resulting from child abuse or neglect; and others [42 U.S.C. 5106a]. The Department incorporated these requirements into the NCANDS.

ACF uses NCANDS data for a variety of purposes, including:

- An annual publication on child maltreatment;
- Child Welfare Outcomes Annual Report to Congress;
- The Child and Family Services Reviews;
- Responding to data requests from other Federal agencies concerning child abuse and neglect; and
- Research activities.

In FY 2000, 17 States submitted aggregate data and 34 States submitted case-level data. The recent increases in the number of States submitting case-level data is linked strongly to ACF's use of the NCANDS data to evaluate and report child welfare outcomes nationally.

Interpreting Child Welfare Outcomes Using NCANDS Data

Although CB has used NCANDS data for more than 10 years to provide a national picture of child maltreatment, the use of NCANDS data to determine child welfare outcomes and State compliance with Federal child welfare requirements is a recent event. The CFS Reviews (see 45 CFR 1355.31–1355.37) measure compliance with the State plan requirements under titles IV–B and IV–E of the Social Security Act by evaluating child and family outcomes. As part of these reviews, CB provides each State under reviews with data profiles generated from data submitted to NCANDS and AFCARS. States report detailed data to AFCARS on children removed from their homes and placed in foster care and children adopted within a State with the involvement of the State child welfare agency.

Data from both AFCARS and NCANDS must be used simultaneously to evaluate child welfare outcomes, because the majority of families and children who are reported in AFCARS are also included in NCANDS. Since the reviews are comprehensive and cover child protective services, foster care, adoption, family preservation, family support and independent living, the only means of obtaining critical national data on children and families for some of these programs is to use the NCANDS and AFCARS data together. These data are used to help States and the Federal government understand what happens to children and families as they move through State child welfare systems, to identify strengths and areas needing improvement in State child welfare systems, and to determine the State's conformity with applicable requirements.

As currently configured, using NCANDS and AFCARS data together presents challenges to States and CB. At the November 2001 meeting of the Children's Bureau with the first 17 States that had undergone a CFS Review, States identified several challenges in using the Federal data sets to measure conformity and evaluate child welfare outcomes. One challenge noted is the reporting period. AFCARS data are based on the Federal fiscal year, on the other hand, PI–CB–98–15, issued September 19, 1998, gave States the option to submit NCANDS data using the calendar year, the Federal fiscal year, or the State fiscal year. Presently, all States now submit data on calendar year basis. As a result, States must analyze and evaluate their effectiveness in preventing child maltreatment and out-of-home placement using data sets from different time periods. Furthermore, CB has developed a national standard for the incidence of child abuse and/or neglect in foster care for the CFS Reviews using both AFCARS and NCANDS data.[1] To generate this measure, CB uses nine months of data (January through September) rather than a full year of data because of the different reporting periods. CB uses a similar measure in the Child Welfare Outcomes Annual Report to Congress that tracks State child welfare agency performance on key outcome measures.[2] Synchronizing the reporting periods will make the NCANDS data available three months earlier. This will enable CB to generate more timely safety profiles for the CFS Reviews and contextual data for the Child Welfare Outcomes Annual Report to Congress. CB believes changing the reporting period for NCANDS ensures the best use of the data reported by States. Since AFCARS data are used in Federal budget projections and State grant allocations,[3] changing the

[1] See ACYF–CB–IM–01–07 for further discussion on the national standards in the CFS reviews.

[2] Log onto *http://www.acf.dhhs.gov/programs/cb/publications/index.htm* for the most recent report to Congress and a discussion of the outcome measures.

[3] For instance, AFCARS data are used in determining State allotments under the Chafee Foster Care Independence Program under section 477 of the Social Security Act. AFCARS data is also used in determining whether a State qualifies for incentive payments under the Adoption Incentive Program under section 4 473A of the Social

AFCARS reporting period would significantly disrupt other priorities.

Changing the NCANDS Reporting Period to a Federal Fiscal Year

To address the above concerns, we are considering changing the NCANDS reporting period to coincide with the Federal fiscal year (October 1 through September 30). This change will make future NCANDS data inconsistent with previous years' data. However, statistical procedures can be used to make appropriate adjustments for analytic purposes, thus diminishing this disadvantage. The proposed changes for submitting NCANDS data are delineated in the table below.

Data year	CB requests data	States submit data	CB finalizes data	CB completes draft annual report
CY 2000	**March 2001**	**June 15, 2001**	**October 2001**	**March 2002**.
CY 2001	**March 2002**	**June 15, 2002**	**October 2002**	**March 2003**.
FFY 2002 (Oct. 2001–Sept. 2002)	December 2002	March 15, 2003	July 2003	December 2003.
FFY 2003 (Oct. 2002–September 2003)	December 2003	March 15, 2004	July 2004	December 2004.

Bold-faced text=past or current data collection schedules. Note FFY 2002 would collect October 2001–December 2001 again from the States. The March 2003 report would be considered the Annual report for 2001; the December 2003 report would be the report for 2002, etc.

ACF is interested in public comment on this issue. In particular, we invite comments regarding:

- The advantages or disadvantages of calendar year versus Federal fiscal year reporting for NCANDS data for States, particularly in interpreting child welfare outcome data
- The advantages or disadvantages of calendar year versus Federal fiscal year reporting of NCANDS data for researchers and other interested parties
- The fiscal and administrative impact on States of changing NCANDS to Federal fiscal year reporting (i.e., costs to Statewide child welfare information systems, burden of proposed submission dates, etc.)
- Other suggestions for addressing the concerns noted regarding the data reporting periods.

Dated: July 16, 2002.

Joan E. Ohl,

Commissioner, Administration on Children, Youth, and Families.

[FR Doc. 02–18377 Filed 7–26–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–20]

Notice of Submission of Proposed Information Collection to OMB Real Estate Settlement Procedures Act (RESPA) Disclosures

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: August 28, 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 and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Joseph_F._Lackey_Jr@OMB.EOP.GOV.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., 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 be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Real Estate Settlement Procedures Act (RESPA) Disclosures.

OMB Approval Number: 2502–0265.

Form Numbers: HUD–1, HUD–1–A.

Description of the Need for the Information and its proposed Use: The Real Estate Settlement Procedures Act of 1974 requires settlement providers to disclose to homebuyers certain information at or before settlement and pursuant to the servicing of the loan and escrow account. This includes a Special Information Booklet, a Good Faith Estimate, an Initial Servicing Disclosure, a Settlement Statement (the Form HUD–1 or Form HUD–1A), and when applicable an Initial Escrow Account Statement, an Annual Escrow Account Statement, an Escrow Account Disbursement Disclosure, an Affiliated Business Arrangement Disclosure, and a Servicing Transfer/Disclosure. This information requirement under OMB control number 2502–0265 consolidates information previously collected under OMB control numbers 2502–0458, 2502–0491, 2502–0501, 2502–0516, and 2502–0517.

Respondents: Individuals or households, business or other for-profit entities.

Frequency of Submission: On occasion and annually.

Security Act. Both programs rely on using available data that are consistent with a Federal fiscal year.

	Number of respondents	Annual	Hours per response	Burden hours
Reporting Burden	20,000	105,300,000	0.04	6,500,000

Total Estimated Burden Hours: 6,500,000.

Status: Reinstatement, with changes, of a previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 23, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–19117 Filed 7–26–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–04]

First Meeting of the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of meeting of the Manufactured Housing Consensus Committee.

SUMMARY: This notice announces the first meeting of the Manufactured Housing Consensus Committee (the Committee) and sets forth the proposed agenda for the meeting. The meeting is open to the public and the site is accessible to individuals with disabilities.

DATES: Meetings will be held on Tuesday, August 13, 2002, from 9 a.m. to 4 p.m., Wednesday, August 14, 2002 from 9 a.m. to 4 p.m., and Thursday, August 15, 2002, from 9 a.m. to 12 p.m.

ADDRESSES: These meetings will be held at the Marriott DC at Metro Center, 775 12th Street, NW., Washington, DC 20005, telephone (202) 737–2200.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Manufactured Housing Program, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 4503(a)(3). The Consensus Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured housing construction and safety standards and procedural and enforcement regulations, and with developing proposed model installation standards. The purpose of this meeting is to initiate the Consensus Committee activities and develop committee procedures.

Tentative Agenda

A. Welcome and Introductions
B. Manufactured Housing Improvement Act of 2000 (Title VI, Pub. L. 106–569, 114 Stat. 2944)
C. Objectives for Administering Organizations's Various Contract Periods
D. HUD Address in Vision and Goals
E. Committee Charter and Federal Advisory Committee Act Procedures
F. ANSI Procedures
G. Committee Procedures and By-Laws
H. Installation Standards
I. Prioritization of Other Work Permitted by the Act
J. Process/Format for Proposed Changes to the Standards and Regulations
K. Scheduling of future meeting(s)

Dated: July 23, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–19118 Filed 7–26–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–00–1020–24]

Mojave Southern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Mojave Southern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Mojave Southern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion will include managers' reports of field office activities; an update on the Southern Nevada Public Land Management Act of 1998; and other topics the council may raise.

All meetings are open to the public. The public may present written and/or oral comments to the council at 3 p.m. Thursday August 22, 2002. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations should contact Phillip Guerrero at (702) 515–5046 by August 1, 2002.

DATE AND TIME: The RAC will meet August 21, 22 and 23, 2002 at the Bureau of Land Management, Ely Field Office, 702 North Industrial Way, Ely NV. 89301–9408 from 8:30 a.m. to 4 p.m. The information phone number at the Ely Field Office is 775–289–1800.

FOR FURTHER INFORMATION CONTACT: Phillip L. Guerrero, Public Affairs Officer, BLM Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas NV 89130–2301, or by phone at (702) 515–5046.

Dated: June 14, 2002.

Phillip L. Guerrero,

Public Affairs Officer, Las Vegas Field Office.

[FR Doc. 02–19051 Filed 7–26–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–01–1220–AA]

Notice of Public Meeting, California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S.

Department of the Interior, Bureau of Land Management (BLM) California Desert District Advisory Council (DAC) will meet at the following dates and locations.

September 13–14, 2002: On Friday, September 13, the Council and members of the public will assemble at the parking lot of the Baker Community Center at 7:15 a.m. and depart 7:30 a.m. for a field tour of BLM-administered public lands The community center is located at 56725 Park Ave in Baker. The Council will meet in formal session on Saturday, September 14 from 8 a.m to 5 p.m. at the Baker Community Center, Baker, California. Scheduled agenda topics will include the following:

Public comment for items on the agenda and other issues
Council members and BLM District and field office manager activity reports
Discussions on proposed Congressional wilderness bills
BLM reports on wilderness values
Update on BLM wilderness management
Economic report from Imperial County

December 13–14, 2002: On Friday, December 13, the Council and members of the public will assemble for a field tour at the Best Western China Lake Inn parking lot at 7:15 a.m. and depart at 7:30 a.m. for a field tour of BLM-administered public lands. The Inn is located at the Best Western China Lake Inn, located at 400 South China Lake Boulevard, in Ridgecrest. The Council will meet in formal session on Saturday, December 14 from 8 a.m to 5 p.m. in the Burroughs High School Fine Arts Theater located at 500 French Avenue, in Ridgecrest, California. Agenda items will discussions on the following topics:

Public comment for items on the agenda and other issues
Council members and BLM managers reports
Update on the West Mojave Plan Draft Habitat Conservation Plan
Routes of travel network
Economic reports from Kern and San Bernardino Counties

FOR FURTHER INFORMATION CONTACT: Doran Sanchez, BLM California Desert District Public Affairs Specialist, (909) 697–5220.

SUPPLEMENTARY INFORMATION: The public is welcome to participate in the field tours, but should plan on providing their own transportation, drinks, and lunch.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is also scheduled at the beginning of the meeting. Time for individual oral comments may be limited depending on the number of people who register to comment and time available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations should contact the BLM as provided below

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

Dated: July 8, 2002.

Linda Hansen,

Acting District Manager, California Desert District.

[FR Doc. 02–19052 Filed 7–26–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–080–1120–PG]

Notice of Public Meeting, Upper Columbia-Salmon Clearwater Resource Advisory Council Meetings; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Upper Columbia-Salmon Clearwater (UCSC) District Resource Advisory Council (RAC) will meet as indicated below.

DATES: Three separate meetings are planned: October 16 and 17, 2002; March 12 and 13, 2003; and June 18 and 19, 2003. Each meeting will begin at 1 p.m. on the first day and end at approximately 5 p.m. on the second day. The public comment period will begin at approximately 3 p.m. on the first day of each meeting. Meetings will be held at the C'mon Inn, 2775 Expo Parkway, Missoula, Montana, because Missoula is centrally located for Council members traveling from the northern and south-central parts of Idaho.

FOR FURTHER INFORMATION CONTACT: Stephanie Snook, RAC Coordinator, BLM UCSC District, 1808 N. Third Street, Coeur d'Alene, Idaho 83814 or telephone (208) 769–5004.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The following topics will be discussed at the October, 2002 meeting:

—Review past accomplishments, Nomination of Officers
—Idaho BLM Table of Organization and Goals
—Briefings on issues such as OHV use, Resource Management Plans and implementation, fire management, and noxious weeds.
—Future issues as identified by the Council

The meetings to be held in March and June 2003, will continue discussions or work on the above agenda items as well as other resource issues. Additional agenda items for the meetings in 2003 will be published in newspapers covering the BLM UCSC District prior to these meetings.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

Dated: July 10, 2002.

Jenifer L. Arnold,

Acting District Manager.

[FR Doc. 02–19053 Filed 7–26–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1020–AC]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Montana, Billings and Miles City Field Offices, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S.

Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held September 19, 2002, in Red Lodge, MT, beginning at 7:30 a.m. When determined, the meeting place will be announced in a News Release. The public comment period will begin at approximately 9:15 a.m. and the meeting will adjourn at approximately 4 p.m.

FOR FURTHER INFORMATION CONTACT: Linda Reder, Acting Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana, 59301, telephone (406) 233–2824.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Montana. At this meeting, topics we plan to discuss include: Healthy Land Monitoring Presentation/Field Trip, National RAC Meeting, Access and Outfitters and Guides Update, Oil and Gas EIS Update and other topics the council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: July 5, 2002.

Sandra S. Brooks,

Field Manager.

[FR Doc. 02–19054 Filed 7–26–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park; Notice of Intent To Prepare an Environmental Impact Statement for the Schoodic General Management Plan Amendment

SUMMARY: In accordance with the National Environmental Policy Act of 1969 [Pub. L. 91–109 Section 102(c)], the National Park Service is preparing an Environmental Impact Statement (EIS) for the Schoodic General Management Plan Amendment. The purpose of the EIS is to assess the impacts of alternative management strategies that will be described in the general management plan amendment for the Schoodic District of Acadia National Park. The National Park Service is formulating a range of alternatives for natural and cultural resource protection, visitor use and interpretation, facilities development, and operations.

SUPPLEMENTARY INFORMATION: Acadia National Park encompasses 100.1 acres of the former Naval Security Group Activity Winter Harbor at Schoodic Point. The former Navy base contains approximately 40 major buildings totaling 178,000 square feet that include a dormitory, apartment complex, cafeteria, medical clinic, fire station, commissary, gymnasium, child day-care center, maintenance facility, recreational facilities, warehouse, and related utility systems. The original Navy apartment and operations building and its generator house are eligible for the National Register of Historic Places.

Pursuant to Public Laws 80–260 and 107–107, the Department of the Navy transferred its property at Schoodic Point to the NPS on July 1, 2002. The NPS is preparing an amendment to Acadia's 1992 General Management Plan for the 2,366-acre Schoodic District of the park to determine the appropriate range of uses for the former Navy facilities and address effects on the park's resources and visitor experiences at Schoodic. The Schoodic District is zoned a ''natural area'' in the park's 1992 General Management Plan and is managed to retain its current use levels and opportunities for low-density recreation.

The three alternatives for the reuse of the site include: (1) Multi-partner approach; (2) National Park Service approach; and (3) no action, as required by the National Environmental Policy Act. The multi-partner approach will emphasize the use and occupancy of the site for research and educational purposes by one or more partners. The partners would contribute to the park's research and education efforts and conduct programs that are consistent with its mission. This alternative will also accommodate the uses described under the National Park Service approach. The National Park Service approach will emphasize the park's use of the site for administering the Schoodic District, providing interpretive services to visitors, facilitating park-specific research, offering resident environmental education programs, and housing NPS employees.

Public Scoping

The NPS is seeking feedback from interested parties who wish to express concerns, make suggestions, and raise issues about the future development and management of the Schoodic District of Acadia National Park. You may submit written comments on the general management plan amendment alternatives, scope of the EIS, and related issues to the National Park Service by postal mail, fax, e-mail, or hand delivery. Mail comments to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609. Fax comments to: (207) 288–5507. E-mail comments to: *acad_planning@nps.gov.* Hand deliver comments during normal business hours to: Acadia National Park Headquarters, McFarland Hill, Rt. 233, Bar Harbor, Maine. Please include your complete name and address along with your comments. If you wish to have your name and address withheld from the public record, you must state so prominently at the beginning of your comments. We will honor your request to the extent allowable by law. Comments must be submitted within 30 calendar days from July 29, 2002.

A draft general management plan amendment and EIS is expected to be completed and available for public review in early fall 2002. After public and agency review of the draft document, the NPS will consider comments and complete a final general management plan amendment and EIS in early 2003, with a Record of Decision to follow.

FOR FURTHER INFORMATION CONTACT: John T. Kelly, Park Planner, at Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609; telephone: (207) 288–5472; fax: (207) 288–5507; e-mail: *john_t_kelly@nps.gov.* Additional information about the Schoodic General Management Plan Amendment and EIS is also available on Acadia National Park's Web site at: *www.nps.gov/acad/schoodic/intro.htm.*

Dated: July 18, 2002.

Paul F. Haertel,

Superintendent, Acadia National Park.

[FR Doc. 02–19096 Filed 7–26–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Jamestown Project Development Concept Plan, Draft Environmental Impact Statement, Colonial National Historical Park, Jamestown Unit, Jamestown, VA, and Jamestown National Historic Site, Jamestown, VA

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the draft environmental impact statement for the Jamestown Project Development Concept Plan, Colonial National Historical Park, Jamestown Unit, and Jamestown National Historic Site.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c), the National Park Service announces the availability of a draft Environmental Impact Statement for the Jamestown Project Development Concept Plan, Colonial National Historical Park, Jamestown Unit, Jamestown, Virginia, and Jamestown National Historic Site, Jamestown, Virginia.

DATES: The National Park Service will accept comments from the public on the Draft Environmental Impact Statement for 60 days after publication of this notice. A public meeting will be held within the 60 day period, on September 12, 2002 between 3 pm and 9 pm at the Williamsburg Community Building, 401 North Boundary Street, Williamsburg, VA.

ADDRESSES: Information will be available for public review and comment in the office of the Superintendent, Colonial National Historical Park, Yorktown, Virginia, in the administrative offices located below the Yorktown Visitor Center. It will also be available at the following locations: Jamestown Visitor Center, Jamestown, Virginia, Colonial National Historical Park; Gloucester County Library, 6382 Main Street, Glouscester, VA 23061; Hampton City Library, 936 Big Bethel Road, Hampton, VA 23666; James City County Library, 7770 Croaker Road, Williamsburg, VA 23188; John D. Rockefeller, Jr. Library, 313 1st Street, Williamsburg, VA 23185; Newport News City Library, 700 Town Center Drive, Suite 300, Newport News, VA 23606; Surry County Library, 11640 Rolfe Highway, Surry, VA 23883; Williamsburg Regional Library, 515 Scotland Street, Williamsburg, VA 23185; York County Public Library, 8500 George Washington Highway, Yorktown, VA 23692.

FOR FURTHER INFORMATION CONTACT: Mike Litterst, Information Officer, Colonial National Historical Park, 757/898–2409.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Alec Gould, Superintendent, Colonial National Historical Park, P.O. Box 210, Yorktown, VA 23690. You may also comment via the Internet to *www.nps.gov/colo.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: Jamestown Project'' and your name and return address in your Internet message. Finally, you may hand-deliver comments to the office of the Superintendent, Colonial National Historical Park, Yorktown, Virginia, in the administrative offices located below the Yorktown Visitor Center. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: July 12, 2002.

Patricia Phelan,

Acting Director, Northeast Region, National Park Service.

[FR Doc. 02–19095 Filed 7–26–02; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–986 and 987 (Final)]

Ferrovanadium From China and South Africa

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–986 and 987 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China and South Africa of ferrovanadium, provided for in subheading 7202.92.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of ferrovanadium from China and South Africa are being sold in the United

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as all ferrovanadium produced in China and South Africa, regardless of the grade, chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium that is used chiefly as an additive in the manufacture of steel. The merchandise is commercially and scientifically identified as ferrovanadium. The scope of these investigations specifically excludes vanadium additives other than ferrovanadium, such as nitrided vanadium, vanadium-aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium-bearing raw materials such as slag, boiler residues, and fly ash. Merchandise classifiable in the Harmonized Tariff Schedule of the United States subheadings 2850.00.20, 8112.40.30, and 8112.40.60 is specifically excluded.

States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on November 26, 2001, by the Ferroalloys Association Vanadium Committee and its members: Bear Metallurgical Co., Butler, PA; CS Metals of Louisiana LLC, Convent, LA; Gulf Chemical & Metallurgical Corp., Freeport, TX; Shieldalloy Metallurgical Corp., Cambridge, OH; and U.S. Vanadium Corp., Danbury, CT.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on November 8, 2002, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on November 22, 2002, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 12, 2002. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 15, 2002, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is November 18, 2002. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 3, 2002; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 3, 2002. On December 16, 2002, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 18, 2002, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: July 23, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–19026 Filed 7–26–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–376, 377, and 379 and 731–TA–788–793 (Final) (Remand)]

Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan; Amended Notice and Scheduling of Remand Proceedings

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its final antidumping and countervailing buy investigations, *Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan,* Nos. 701–TA–376, 377 and 379 (Final) and 731–TA–788–793 (Final).

EFFECTIVE DATE: July 23, 2002.

FOR FURTHER INFORMATION CONTACT: Woodley, Timberlake, Office of Investigations, telephone 202–205–3188 or Neal J. Reynolds, Office of General Counsel, telephone 202–205–3093, U.S. International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

In May 1998, the Commission determined, by a four-to-two vote, that an industry in the United States was not being materially injured or threatened

with material injury by reason of imports of cold-rolled stainless steel plate in coils from Belgium and Canada. On August 28, 2002, the Court of International Trade affirmed this determination as being in accordance with law and supported by substantial evidence. *Allegheny Ludlum Corp.* v. *United States,* 116 F.Supp. 2d 1276 (CIT 2000). On April 19, 2002, the U.S. Court of Appeals for the Federal Circuit vacated lower court's ruling, finding that the Commission's volume and impact findings with request to cold-rolled stainless steel plate were not in accordance with law and that its pricing finding for cold-rolled plate was unsupported by substantial evidence. *Allegheny Ludlum Corp.* v. *United States,* Appeal No. 01–1223 (April 19, 2002). On June 18, 2002, in accordance with the Federal Circuit's decision, the Court of International Trade vacated it earlier decision and remanded to the Commission its final negative determination with respect to cold rolled stainless steel plate. In its order, the Court of International Trade remands the determination to the Commission ''for proceedings not inconsistent with the Federal Circuit's decision in Appeal No. 01–1223.'' It also directs the Commission to issue a remand determination within sixty days of the date of the order, *i.e.,* by August 19, 2002.

Scheduling the Vote

The Commission will vote on the remand determination at a public meeting to be held on Monday, August 12, 2002. The meeting is tentatively scheduled for 2 p.m.

Reopening Record

In order to assist it in making its determination on remand, the Commission is reopening the record on remand in this investigation to seek additional data with respect to the impact of the subject imports from Belgium and Canada on the domestic industry producing cold-rolled stainless steel plate in coils.

Participating in the Proceedings

Only those persons who were interested parties to the original administrative proceedings (*i.e.,* persons listed on the Commission Secretary's service list) may participate in this remand proceeding.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigation will be released to parties under the administrative protective order (''APO'') in effect in the original investigation. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make business proprietary information gathered in the final investigation and this remand investigation available to additional authorized applicants, that are not covered under the original APO, provided that the application is made not later than seven (7) days after publication of the Commission's notice of reopening the record on remand in the **Federal Register**. Applications must be filed for persons who are on the Judicial Protective Order in the related CIT case, but are not currently covered under the original APO. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in this remand investigation.

Written Submissions

Each party who is an interested party in this remand proceeding may submit a written brief to the Commission. The brief must be concise and be limited to comments on how the data obtained in this remand proceeding affect the Commission's original determination with respect to cold-rolled stainless steel plate products. Any material in the comments not addressing this limited issue will stricken from the record. The brief must be doubled-spaced, single-sided, and on stationary measuring 8 ½ inches. The comments will be limited to thirty (30) pages, and must be filed no later than the close of business on August 7, 2002.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: July 23, 2002.

By order of the Commission.

Marilyn Abbott,

Secretary.

[FR Doc. 02–19025 Filed 7–26–02; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Presidential Task Force on Employment of Adults With Disabilities (PTFEAD) Youth Advisory Committee; Notice of Open Meeting and Agenda

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of meeting.

SUMMARY: The Office of the Secretary, United States Department of Labor, is notifying the public that the Youth Advisory Committee to the Presidential Task Force on Employment of Adults with Disabilities will conduct an open meeting on Monday, August 12, 2002 in Washington, DC.

DATE: The Youth Advisory Committee will meet from 9 a.m. until approximately 4 p.m., on Monday, August 12 at the Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, Maryland, 20814.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Horne, Senior Policy Advisor, Presidential Task Force on Employment of Adults with Disabilities (phone: (202) 693–4923; TTY (202) 693–4920; FAX (202) 693–4929; e-mail *Horne-Richard @dol.gov*).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Because of time constraints, oral testimony from the public will not be possible. Anyone wishing to do so, however, may submit a written statement. Written statements should be kept as brief as possible. The Committee is interested in comments and suggestions for future directions related to the following areas: Employment; Education; Health Care and Income Supports; Transportation, Housing, Independent Living, and Public Awareness. Written submissions received prior to the meeting will be provided to the members of the committee and will be included in the record of the meeting. To ensure that a written statement is received in time to be part of the record of the meeting, the statement should be mailed to the contact person at least five business days prior to the meeting. People with disabilities who need special accommodations should contact Dr. Richard Horne (phone: (202) 693–4923; TTY (202) 693–4920; FAX (202) 693–4929; e-mail *Horne-Richard@dol.gov*) no later than one week before the meeting.

The agenda for this meeting includes:

—Report out on work of subcommittees.

—Discussion and vote by entire committee on which subcommittee

recommendations will be included in the committee's final report.

An official record of the meeting will be available for public inspection in Room S 1303 of the Department of Labor Building (Francis Perkins Building) located at 200 Constitution Avenue, NW. , Washington, DC 20210. For additional information contact Dr. Richard Horne (phone: (202) 693–4923; FAX (202) 693-4929; or e-mail *Horne-Richard@dol.gov*)

Signed at Washington, DC, this 23rd day of July, 2002.

Gary Reed,

Acting Executive Director, Presidential Task Force on Employment of Adults with Disabilities.

[FR Doc. 02–19123 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,195; Wellman Thermal Systems, Inc., Shelbyville, IN

TA–W–41,429; Concord Wire, Worcester, MA

TA–W–41.480; Newell Manufacturing Corp., Lowell, MI

TA–W–41,286; Semitool, Inc., Kalispell, MT and Operating at the Following Locations A; San Jose, CA, B; Beaverton, OR, D; Dallas, TX, D; Austin, TX, E; Tempe, AZ, F; Cary, NC, G; Nashua, NH, H; Libby, MT

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–41,672; VMV Paducahbilt, VMV Enterprises, Paducah, KY

TA–W–40,410; Thyseen Mining Construction of Canada, A Contractor for Stillwater Mining Co., Nye, MT

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–41,307; Canton Drop Forge, Inc., A Wholly Owned Subsidiary of Engineering Materials, Inc., Canton, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,422; McCain Foods USA, Inc., Anchor Appetizer Group, Appleton, WI

TA–W–41,161; Wheeling Pittsburgh Steel Corp., Wheeling, WV, A; Beech Botton, WV, B; Allenport, PA, C; Steubenville, OH, D; Martins Ferry, OH, E; Yorkville, OH

TA–W–41,165; Flextronics Enclosures, Smithfield, NC

TA–W–41,485; Fold-Pak, Gulf States Paper Cop., Newark NY

TA–W–41,363; Regal-Beloit Corp., Inc., Mitchell, IN

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,465; Energy Converters, Inc., Dallas, PA: February 7, 2001.

TA–W–41,455; Werbak, Inc., Webster, MA: March 14, 2001.

TA–W–41,376; Techalloy Co., Inc., Florence, MA: April 4, 2001.

TA–W–41,373; Springs Window Fashions, LP, Montgomery, PA: April 12, 2001.

TA–W–41,365 Germantown (USA) Co. Including Workers of Volt Services Group and Westaff, West Chester, PA: March 21, 2001.

TA–W–41,360; Warnaco, Calvin Klein Jeans Div., Nesquehoning, PA: March 28, 2001.

TA–W–41,249; Getinge/Castle, Inc., Rochester, NY: February 15, 2001.

TA–W–41,231; Corning, Inc., Telecommunications Products Div., Wilmington, NC: February 5, 2001.

TA–W–41,014; Exabyte Corp., Boulder, CO: February 22, 2001.

TA–W–40,757 A, B; Sony Electronics, Inc., Sony Technology Center, Aperture Grille Div. Including Leased Workers at Tops Temporary and Adecco, Mount Pleasant, PA and Projection Television Picture Tube Div., Mount Pleasant, PA and Pittsburgh Television Group Div., Including Leased workers at Tops Temporary, Adecco and Burn Staffing Services, Mount Pleasant, PA: October 10, 2000.

TA–W–39,276; Cutting Edge Texstyles, Boston, MA: May 7, 2000.

TA–W–38,915; Verson Press, A Div. Of Allied Products Corp., Chicago, IL: March 12, 2000.

TA–W–40,587; UCAR Carbon Co., Clarksburg Works, Clarksburg, WV: November 14, 2000.

TA–W–40,984; Timesavers, Inc., Crystal, MN: February 5, 2001.

TA–W–41,037; Devant Ltd, Monroe, NC: February 19, 2001.

TA–W–41,091; Halliburton Energy Services, Tucson, AZ, A; Bakersfield, CA, B; Duncan, OK, C; Carrollton, TX, D; Winnemucca, NE: February 21, 2001.

TA–W–41,243; Texaco Exploration and Production, Inc. (TEPI), Operating in The Following States: AL, A; CA, B; CO, C; LA, D; NM, E; OK, F; TX, G; WY: June 8, 2001.

TA–W–41,336; C and W Fabricators, Gardner, MA: April 4, 2001.

TA–W–41,414; Honeywell International, Inc., Consumer Products Group, Nevada, MO: April 18, 2001.

TA–W–41,436; Tyco Electronics, Formerly CII Technologies, Corcom Div., El Paso, TX: March 21, 2001.

TA–W–41,457; Sandisk Corp., Sunnyvalle, CA: March 28, 2001.

TA–W–41,463; Knight Textile Corp., Knight Industries, Saluda, SC: April 19, 2001.

TA–W–41,464; Analog Devices, Inc., Final Test Operations, Wilmington, MA: April 12, 2001.

TA–W–41,474; Aerus, LLC, Formerly Electrolux, LLC, Bristol, VA: April 2, 2001.

TA–W–41,482; D. Hersh Neckwear, Inc., Worcester, MA: April 12, 2001.
TA–W–41,486; Mirro Co., Div. Of Newell-Rubbermaid, Administrative and Technical Support Personnel, Manitowoc, WI: January 14, 2001.
TA–W–41,614; Great Northern Paper, Inc., Millinocket, ME: May 17, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of July, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06120; Aerus, LLC, Formerly Electrolux, LLC, Bristol, VA
NAFTA–TAA–06165; Regal Originals, Inc., New York, NY
NAFTA–TAA–05912; Timesavers, Inc., Crystal, MN
NAFTA–TAA–05921; Devant Ltd, Monroe, NC
NAFTA–TAA–06110; Newell Manufacturing Corp., Lowell, MI

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

NAFTA–TAA–06243; VMV Paducahbilt, VMV Enterprises, Paducah, KY
NAFTA–TAA–06183 & A; Union of Needletrades, Industrial & Textile Employees, Columbus, GA and Phenix City, AL
NAFTA–TAA–06337; Trico Products Corp., Buffalo, NY
NAFTA–TAA–06259; Stream International, Memphis, TN
NAFTA–TAA–06250; Florsheim Distribution Center, Florsheim Group, Inc., Jefferson City, MO
NAFTA–TAA–06218; Insystems Technologies, Ltd, Roanoke, VA

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–04909; Cutting Edge Texstyles, Boston, MA: May 7, 2000.
NAFTA–TAA–06055; C and W Fabricators, Inc., Gardner, MA: April 4, 2001.
NAFTA–TAA–06085; London Harness and Cable, Trenton, NJ: March 6, 2001.
NAFTA–TAA–06127; Knight Textile Corp., Knight Industries, Saluda, SC: April 19, 2001.
NAFTA–TAA–06141; Smiths-Group PLC, Portex, Inc., Fort Myers, FL: April 22, 2001.
NAFTA–TAA–06170; Tyco Electronics, Formerly CII Technologies, Corcom Div., El Paso, TX: March 25, 2001.
NAFTA–TAA–06307; Vishay Dale Electronics, Columbus, NE: June 25, 2001.
NAFTA–TAA–05958; Wellman Thermal Systems, Inc., Shelbyville, IN: March 13, 2001.
NAFTA–TAA–06078; Corning, Inc., Telecommunications Products Div., Wilmington, NC: March 16, 2001.

I hereby certify that the aforementioned determinations were issued during the months of July, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 22, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–19087 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,505]

Beacon Light Products Inc., Meridian, ID; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investi-gation was initiated on May 13, 2002 in response to a petition filed by a company official, on behalf of workers at Beacon Light Products, Inc., Meridian, Idaho.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 15th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19089 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,525, TA–W–40,525E, and TA–W–40,525F]

The Boeing Company, Commercial Airplane Group, Seattle, WA, and Corinth, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on March 18, 2002, applicable to workers of The Boeing Company, Commercial Airplane Group, Seattle, Washington. On April 26, 2002, the certification was amended to include workers of The Boeing Company plants in Corinth and Irving, Texas. The notice was published in the **Federal Register** on June 4, 2002 (67 FR 38523).

At the request of the State agency, the Department again reviewed the amended certification for workers of the

subject firm. The review of the TAA petition certification revealed that the impact date established for workers of The Boeing Company, Seattle, Washington, was February 25, 2002, the day immediately following the expiration of the previous certification for the Boeing workers in Seattle, Washington (TA–W–37,129).

The review further found that had The Boeing Company's Seattle workers not been previously certified, the impact date would have been set at December 18, 2000, one year prior to the date of the petition.

Other findings show that when the amendment was issued to include workers of The Boeing Company in Corinth and Irving, Texas, the Department failed to set the earliest impact date for those workers.

Therefore, the Department is again amending the certification to change the impact date for workers of The Boeing Company, Corinth and Irving, Texas, from February 25, 2002 to December 18, 2000.

The amended notice applicable to TA–W–40,525 is hereby issued as follows:

All workers of The Boeing Company, Commercial Airplane Group, Seattle, Washington (TA–W–40,525), who became totally or partially separated from employment on or after February 25, 2002 through March 18, 2004, and workers of The Boeing Company, Commercial Airplane Group, Corinth, Texas (TA–W–40,525E), and Irving, Texas (TA–W–40,525F), who became totally or partially separated from employment on or December 18, 2000 through March 18, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19086 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

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 August 8, 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 August 8, 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 8th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 07/08/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,775	Husscy Copper (Wkrs)	Lectsdale, PA	03/21/2002	Copper Sheets and Strips.
41,776	Worthington Steel ( )	Malvern, PA	05/02/2002	Nickel Strip Steel.
41,777	Patterson Drilling (Wkrs)	Snyder, OH	04/29/2002	Crude Oil.
41,778	Robert Bosch (UAW)	Ashland, OH	04/30/2002	Braking Systems.
41,779	Robert Bosch (Wkrs)	Lithia Springs, GA	04/26/2002	Alternators and Starters.
41,780	Motorola, Inc. (Co.)	Plantation, FL	04/18/2002	Two-Way Radios.
41,781	Turfer Sportswear (Wkrs)	Woonsocket, RI	06/28/2002	Sportswear.
41,782	Brach Confections (IBT)	Chicago, IL	06/04/2002	Candy.
41,783	Oxford Industries (Wkrs)	New York, NY	03/25/2002	Women Clothing.
41,784	Doutt Tool (Co.)	Venango, PA	06/19/2002	Machine Parts.
41,785	Cairn Studio (Co.)	Mooresville, NC	06/13/2002	Art Reproductions.
41,786	National Textiles (Wkrs)	Winston Salem, NC	06/20/2002	Knit Fabrics.
41,787	Strattec Security (Co.)	Milwaukee, WI	06/19/2002	Mechanical Locks.
41,788	Johnson Control (Co.)	Lapeer, MI	06/19/2002	Chevy Blazers and Pickup Parts.
41,789	General Electric (IUE)	Murfreesboro, TN	06/19/2002	Washington Machine Motors.
41,790	Fleetwood Homes of Lumber (Wkrs)	Lumberton, NC	06/20/2002	Homes.
41,791	Neuroscan, Inc. (Wkrs)	El Paso, TX	06/18/2002	Medical Research Equipment.
41,792	JB Tool and Machine (Wkrs)	Wapakoneta, OH	06/17/2002	TV Frames.
41,793	General Cable (UE)	Sanger, CA	06/24/2002	Wire and Cable.
41,794	Sunbeam Corporation (Wkrs)	Hattiesburg, MS	06/06/2002	Household Appliances.
41,795	Edward Vogt Value (Wkrs)	Jeffersonville, IN	06/26/2002	Valves and Fittings.
41,796	Tredegar Film Products (Wkrs)	Carbon Dale, PA	3/18/2002	Breathable Film.
41,797	Lewiston Shoe (Co.)	Lewiston, ME	06/27/2002	Shoe Machinery.
41,798	Exide (IBEW)	Kankakee, IL	06/04/2002	Absolyte II Technology.
41,799	General Electric Industry (Wkrs)	Salem, VA	06/20/2002	Turbine Control Panels.
41,800	Flextronics Enclosure (Co.)	New Braunfels, TX	06/18/2002	Model, Metal Stamping, Electronic Assemb.
41,801	Bard Endoscopic Tech (Co.)	Mentor, OH	05/29/2002	Gastrointestinal Medical Devices.

APPENDIX—Continued

[Petitions instituted on 07/08/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,802	U.S. Conec (Wkrs)	Hickory, NC	06/17/2002	Fiber Optics.
41,803	Copeland Corp. (Wkrs)	Ava, MO	06/12/2002	Air Conditioner.
41,804	Premier Turbines (Wkrs)	Independence, KS	06/24/2002	Air Craft Engines.
41,805	Schneider Automation (Co.)	North Andover, MA	07/01/2002	Control Equipment.
41,806	Bethel Furniture Stock (Co.)	Bethel, ME	06/20/2002	Wood Components.
41,807	North American Refractori (Wkrs)	Pittsburgh, PA	03/12/2002	Ladle Slide Gate Components.

[FR Doc. 02–19100 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,359]

L. Lawrence Products, Huntingdon Valley, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 22, 2002 in response to a petition filed by a company official, on behalf of workers at L. Lawrence Products, Huntingdon Valley, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of July, 2002

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19088 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

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 August 8, 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 August 8, 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 1st day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 07/01/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,733	Lenox China (Comp)	Oxford, NC	06/24/2002	China Giftware & China Holloware.
41,734	Santiam Forest Products (Comp)	Sweet Home, OR	06/21/2002	Softwood Lumber.
41,735	MSC Pinole Point Steel (Wkrs)	Richmond, CA	06/11/2002	Steel Coils and Sheet.
41,736	Therm-O-Disc (Comp)	Muskegon, MI	06/18/2002	Various Therm-O-Disc Products.
41,737	Severn Trent Services (Comp)	Fieldale, VA	06/19/2002	Wastewater Contractor.
41,738	Customer Satisfaction Fir (Wkrs)	Wiles-Barre, PA	06/07/2002	Customer Service.
41,739	Wemco Precision Tool (Comp)	Meadville, PA	06/14/2002	Machining Services.
41,740	Sulzer Pumps (Comp)	Portland, OR	06/10/2002	Industrial Pumps.
41,741	Weyerhauser (Comp)	Woodburn, OR	06/17/2002	I-Joist.
41,742	Komatsu America Corp. (Comp)	Peoria, IL	06/12/2002	Outsourcing Machined Parts.
41,743	Alfa Laval (Tri-Clover) (IAMAW)	Kenosha, WI	05/13/2002	Values and Clamps.
41,744	Angelica Image Apparel (Wkrs)	St. Louis, MO	06/12/2002	Uniforms.
41,745	Angelica Image Apparel (Wkrs)	Collinwood, TN	05/23/2002	Healthcare Garments.
41,746	Kelly Technical Services (Wkrs)	Independence, OH	04/26/2002	Flat and Hot Roll Steel.
41,747	G&T Industrial Sheet (Comp)	Bend, OR	05/17/2002	Pipes.
41,748	IBM (Wkrs)	Research Triang, NC	05/15/2002	Technical Assistance.
41,749	Toro Co. (UAW)	Bloomington, MN	05/20/2002	Mowers and Sprayers.

APPENDIX—Continued

[Petitions instituted on 07/01/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,750	D and L Tool (Comp)	Meadville, PA	06/11/2002	Molds.
41,751	Gilbert Mfg. Co. (Comp)	South Hill, VA	05/28/2002	Under Cabinet Lighting.
41,752	Super Steel Schenectady (Wkrs)	Scotia Glenvill, NY	05/17/2002	Locomotive Parts.
41,753	Gerber Technology, Inc. (Wkrs)	Richardson, TX	06/06/2002	Cutting Machines.
41,754	T.C. Timber Habermass (Comp)	Skaneateles, NY	06/13/2002	Wooden Toys.
41,755	Dale Hollow Apparel (Wkrs)	Byrdstown, TN	06/07/2002	Shirts and Blouses.
41,756	H and L Tool (Comp)	Erie, PA	06/12/2002	Mold Building and Repair.
41,757	Curt G. Joa, Inc. (Wkrs)	Boynton Beach, FL	06/14/2002	Processing Machinery.
41,758	Parker Hosiery Co. (Comp)	Old Fort, NC	06/13/2002	Socks.
41,759	United Chair (Comp)	Leeds, AL	05/15/2002	Office & General Institution Seating.
41,760	Industrial Coils (Comp)	Baraboo, WI	06/12/2002	Magnetic Windings.
41,761	Glen Oaks/Marietta Sports (Wkrs)	Dallas, TX	06/13/2002	Men's Dress Socks.
41,762	Valeo Climate Control (Comp)	Decatur, IL	06/03/2002	AC Components.
41,763	Pabst Meat Supply (Comp)	Invergrove Hgts, MN ...	05/10/2002	Meat.
41,764	Corning Frequency Control (Comp)	Mercersburg, PA	06/10/2002	Crystal Blanks and Resonators.
41,765	Regal Plastics (UAW)	Roseville, MI	06/18/2002	Retainer Jack Stowage Cover.
41,766	Crucible Specialty Metals (Wkrs)	Syracuse, NY	06/14/2002	Valve Steel.
41,767	Intermix Foods (Wkrs)	El Paso, TX	06/10/2002	Tortillas, Chilli.
41,768	Bridal Originals (Comp)	DuQuoin, IL	06/07/2002	Formal Dresses.
41,769	Siemens Demag Delaval (Wkrs)	Trenton, NJ	05/29/2002	Steam Turbines.
41,770	RFS Ecusta (Wkrs)	Pisgah Forest, NC	05/21/2002	Cigarette Papers.
41,771	Standard Container (Comp)	Edgar, WI	05/15/2002	Bassinets.
41,772	Fisher Products Group (Wkrs)	Pittsburgh, PA	06/17/2002	PH Meters.
41,773	Degussa (Wkrs)	Theodore, AL	06/14/2002	Polyoxymenthlene.
41,774	Racine Steel Castings (UAW)	Racine, WI	06/14/2002	Automobile Seats.

[FR Doc. 02–19099 Filed 7–26–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning a proposed extension of a currently approved data collection: the Youth Employment Survey (YES). The extension will allow for an analysis of changes in the youth employment and educational attainment rates in the Youth Opportunity areas. The baseline estimates have already been completed under the current OMB approval; the extension of this collection will allow for the completion of the follow-ups.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 27, 2002.

ADDRESSES: Kerri Vitalo, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Ave. NW, Room N–5637, Washington, DC 20210; 202–693–3912 (this is not a toll-free number); *kvitalo@doleta.gov;* Fax: 202–693–2766 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Youth Opportunity Area (Kulick) Demonstration is an initiative designed to improve the labor market prospects of out-of-school youth in a small number of high poverty areas. Under this demonstration, eleven Opportunity Areas have been created to expand employment, education, and training opportunities for out-of-school youth ages 16–24, with priority given to high school dropouts. Each Opportunity Area consists of an identified target area within a designated empowerment zone or enterprise community with a population between 10,000 and 20,000 persons and a poverty rate among the highest in the community. Grants were awarded starting in 1996, 1997, and 1999. The Opportunity Areas are in the cities of Chicago, Los Angeles, Houston, New York. Boston, Detroit, Denver, Baltimore, Oakland, San Diego, and in Kentucky's Lake County Area Development District. They have been designated incrementally over a three year period.

In February 2000, ETA awarded 36 Youth Opportunity (YO) Grants as Kulick grants' successors to cities, rural areas, and Native American reservations across the nation to attack the problem of persistent unemployment and underemployment among youth in high-poverty urban and rural areas. The YO grants are intended to be the foundation for community-wide efforts to mobilize resources in helping these youth to enter the economic mainstream. The YO grants are a sustained, five-year effort in each community that, in addition to increasing the labor market and educational success of area youth, also are to provide other developmental benefits for program participants. It is expected that communities will supplement the YO grants with other programs funded at the Federal, state, and local levels that are designed to

help youth make a successful transition to employment or to post-secondary education or training.

An important part of determining whether these demonstrations and grants are successful is to measure the youth employment rate in the subject areas before the program begins in each area and again after several years of operation. The pre-program estimates for both Kulick and YO grants have already been completed under the current OMB approval; the extension of this collection will allow for the completion of the post-program comparisons in the final five Kulick sites (Detroit, Denver, Baltimore, Oakland, San Diego) and the thirty-six YO sites. The currently approved YES survey is strongly based on the Current Population Survey (OMB Control No. 1220–0100).

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions or responses.

III. Current Actions

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Youth Employment Survey.

OMB Number: 1205–0373.

Affected Public: Individuals and households.

Estimated Total Burden Hours: See chart below. The total burden to respondents is 19,499 hours—13,345 for the screener and 6,154 for the administration of the questionnaire.

Site	Total respondents		Burden (hours)	
	Screener	Questionnaire	Screener	Questionnaire
Kulick Site	12,350	3,285	1,027	820
YO Site	147,814	21,338	12,318	5,334
Total	160,050	24,623	13,345	6,154

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 22, 2002.

Gerard F. Fiala,

Administrator, Office of Policy and Research.

[FR Doc. 02–19098 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—6089]

Delphi Harrison Thermal Systems Lockport, NY; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on August 21, 2001 in response to a petition filed on behalf of workers at Delphi Harrison Thermal Systems, Lockport, New York.

This case is being terminated because the separated workers have been rehired since the filing of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 5th day of July 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19090 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—6198]

General Electric Company, Motors Division, Transformer Division, Fort Wayne, IN; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on May 13, 2002, in response to a worker petition which was filed by the IUE–CWA, Local 901, on behalf of workers at General Electric Company, Motors Division, Transformer Division, Fort Wayne, Indiana.

Currently, an active certification covering the petitioning group of workers remains in effect NAFTA #5034. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 16th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19092 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–06295]

Sun Belt Interplex, Inc., Tamarac, FL; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA-TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on April 22, 2002, in response to a petition filed by a company official on behalf of workers at Sun Belt Interprex, Inc., Tamarac, Florida.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19093 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6329]

Tyco International, White City, OR; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on May 30, 2001, in response to a petition filed by the company on behalf of workers at Tyco International, White City, Oregon.

The investigation revealed that this petition is a copy of the petition for which the Department issued a negative determination on November 7, 2001 (NAFTA–4935). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, DC, this 15th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19094 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—06181]

VF-Imagewear (West), Inc., Mt. Pleasant, TN; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on May 13, 2002, in response to a petition filed by a company official on behalf of workers at VF-Imagewear (West), Inc., Mt. Pleasant, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 5th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–19091 Filed 7–26–02; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–528, 50–529, and 50–530]

Arizona Public Service Company, Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. NPF–41, NPF–51, and NPF–74 for the Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (Palo Verde) to the extent held by Arizona Public Service Company (APS), as a co-owner (29.1 percent interest) and the licensed operator of Palo Verde. The transfer would be to Pinnacle West Energy Corporation (PWE). The Commission is also considering amending the licenses, including the antitrust conditions attached thereto, for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by APS, PWE would acquire APS's current 29.1 percent ownership interest in Palo Verde and become responsible for the operation and maintenance of Palo Verde, following approval of the proposed license transfers. The remaining 70.9 percent ownership interest in Palo Verde would remain with the following six other current licensees of Palo Verde: Salt River Project Agriculture Improvement and Power District (17.49 percent interest), El Paso Electric Company (15.80 percent interest), Southern California Edison Company (15.80 percent interest), Public Service Company of New Mexico (10.20 percent interest), Southern California Public Power Authority (5.91 percent interest), and Los Angeles Department of Water and Power (5.70 percent interest). No physical or operational changes to Palo Verde are being proposed in the application. The present plant organization, the oversight organizations, and the engineering and support organizations will be transferred from APS to PWE essentially intact.

The proposed amendments would generally replace references to APS in the licenses, including the antitrust conditions attached thereto, with references to PWE to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific

application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By August 19, 2002, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Jay M. Gutierrez, Esq., Morgan, Lewis & Bockius, LLP, 1111 Pennsylvania Avenue, NW., Washington, D.C. 20004; Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by August 28, 2002, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated April 15, 2002, and supplement thereto dated July 11, 2002, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 23rd day of July 2002.

For the Nuclear Regulatory Commission.

Jack Donohew,

Senior Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–19073 Filed 7–26–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

Virgil C. Summer Nuclear Station; Notice of Withdrawl of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of South Carolina Electric & Gas Company (the licensee) to withdraw its December 28, 2000, application, as supplemented September 20, 2001, and January 9, 2002, for proposed amendment to Facility Operating License No. 50–395 for the Virgil C. Summer Nuclear Station, located in Fairfield County, South Carolina.

The proposed amendment would have revised the Virgil C. Summer Nuclear Station Technical Specifications pertaining to the Engineered Safety Feature Actuation System Instrumentation, Functional Unit 5.b. (Automatic Actuation Logic and Actuation Relay) Turbine Trip and Feedwater Isolation.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 18, 2001 (66 FR 20009). However, by letter dated June 27, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 28, 2000, supplements dated September 20, 2001, and January 9, 2002, and the licensee's letter dated June 27, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 16th day of July.

For the Nuclear Regulatory Commission.

Karen R. Cotton,

Project Manager, Section 1, Project Directorate ll, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–19072 Filed 7–26–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 and 50–389]

Florida Power & Light Company, et al., St. Lucie Plant, Units Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to the Facility Operating Licenses Nos. DPR–67 and NPF–16, issued to Florida Power and Light Company (the licensee) for operation of the St. Lucie Plant, Units 1 and 2, respectively, located in St. Lucie County, Florida. Therefore, pursuant to 10 CFR 51.21 and 51.32, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would amend Section 4.2 of the St. Lucie Units 1 and 2 Environmental Protection Plans (Non-radiological) to incorporate the revised terms and conditions of the Incidental Take Statement (ITS) included in the Biological Opinion issued by the National Marine Fisheries Service (NMFS) on May 4, 2001, as clarified by NMFS letter dated October 8, 2001, and to reflect a change in the administration of the National Pollutant Discharge Elimination System (NPDES) permitting programs from the U.S. Environmental Protection Agency to the Florida Department of Environmental Protection.

The proposed action is in accordance with the licensee's application dated January 25, 2002.

The Need for the Proposed Action

The proposed action is needed to reflect the revised terms and conditions of the ITS as set forth in the May 4, 2001, Biological Opinion, as clarified by NMFS letter dated October 8, 2001, and to document the change in the permitting authority of the NPDES permit.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed changes are administrative in nature and have no effect on plant equipment or plant operation. No changes will be made to the design, licensing bases, or the applicable procedures for the units.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluent that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect any non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative.) Denial of the application would result in no significant change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not include the use of any different resources than those previously considered in the Final Environmental Statement for St. Lucie Unit 1, dated June 1973, and in the Final Environmental Statement for St. Lucie Unit 2, dated April 1983 (NUREG–0842).

Agencies and Persons Consulted

On July 9, 2002, the staff consulted with the Florida State official, William Passetti, of the Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comment or objections.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 25, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 22nd day of July 2002.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Acting Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–19074 Filed 7–26–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–31]

Yankee Atomic Electric Company; Issuance of Environmental Assessment and Finding of No Significant Impact for the Proposed Exemption

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 72.214 to the Yankee Atomic Electric Company (YAEC). The requested exemption would allow YAEC to deviate from the requirements of Certificate of Compliance No. 1025 (the Certificate), Appendix A, Technical Specifications (TS), Table A2–2, Intact Fuel Assembly Characteristics for the NAC–MPC. The exemption would modify the specified fuel enrichment parameters to incorporate fuel enrichment fabrication tolerances into the Yankee-Class fuel parameters which would allow YAEC to maintain continuity of the fuel loading campaign at Yankee Nuclear Power Station (YNPS) in Rowe, Massachusetts.

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated May 10, 2002, YAEC requested an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 72.214 to deviate from the requirements of Certificate of Compliance No. 1025, Appendix A, Table A2–2. YAEC is a general licensee, authorized by NRC to use spent fuel storage casks approved under 10 CFR part 72, subpart K.

YAEC plans to use the NAC–MPC cask system to store spent nuclear fuel, generated at YNPS, at an independent spent fuel storage installation (ISFSI) located in Rowe, Massachusetts, on the YNPS site. The YNPS ISFSI has been constructed for interim dry storage of spent nuclear fuel.

By exempting YAEC from 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 72.214, YAEC will be authorized to store fuel with enrichments 0.03 wt % U–235 larger than those enrichments specified in the existing technical specifications for Yankee-Class fuel. The revised fuel enrichment parameters for the Yankee-Class fuel are as follows (all enrichments are in wt % of U–235):

Combustion Engineering Type A	Maximum—3.93	Minimum—3.66
Combustion Engineering Type B	Maximum—3.93	Minimum—3.66
Exxon Type A	Maximum—4.03	Minimum—3.46
Exxon Type B	Maximum—4.03	Minimum—3.46
Westinghouse Type A	Maximum—4.97	Minimum—4.90
Westinghouse Type B	Maximum—4.97	Minimum—4.90
United Nuclear Type A	Maximum—4.03	Minimum—3.96
United Nuclear Type B	Maximum—4.03	Minimum—3.96

The specifications above would be in lieu of those in the current Certificate of Compliance No. 1025, Rev. 1, Appendix A, Table A2–2. The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

On April 18, 2002, the Certificate holder, NAC International (NAC), submitted to the NRC an application to amend Certificate of Compliance No. 1025. The requested amendment includes the same revisions to Table A2–2 in Appendix A to the Certificate as requested in this exemption. The NRC staff has reviewed the application and agreed with the applicant's conclusion that the NAC–MPC system is not significantly affected by increasing the enrichment by 0.03 wt % above the previous design basis enrichment and does not impact the ability of the NAC–MPC to meet the requirements of 10 CFR part 72.

Need for the Proposed Action: The revised Table A2–2 will authorize for storage, fuel with enrichments that incorporate enrichment fabrication tolerances for the Yankee-Class fuel. This will allow YAEC to maintain continuity of fuel loading activities to permit inspection of the fuel assemblies in the lower tier of the spent fuel pool. The exemption will also support YAEC's goal of a timely decommissioning of the YNPS site. The overall result of not granting the exemption would be unnecessary delays in schedule and delayed completion of decommissioning activities with negligible impact on safety. Because the 10 CFR part 72 rulemaking to amend the Certificate will not be completed prior to the date that YNPS plans to begin loading fuel into the NAC–MPC cask systems, the NRC is proposing to grant this exemption based on the staff's technical review of information submitted by YAEC and NAC.

Environmental Impacts of the Proposed Action: The Commission has already determined that spent fuel can be stored safely and without significant environmental impact at an onsite ISFSI in the NAC–MPC cask system (65 FR 12444, dated March 9, 2000). Staff's review of NAC's application for an amendment of its Certificate confirmed that changes in fuel parameters to take into account fabrication tolerances for enrichment will not increase the probability or consequences of accidents. No changes have been requested to the types or quantities of any radiological effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. There are no significant radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action: Since there is no significant environmental impact associated with the proposed action, alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption and use the fuel assembly parameters table in the current Certificate. Denial of the exemption will result in unnecessary delays in schedules and delayed completion of decommissioning activities. With the proposed actions, the applicant continues to meet all applicable safety requirements.

Agencies and Persons Consulted: On July 9, 2002, Mr. Jim Muckerhide, Nuclear Engineer, Nuclear Safety, Massachusetts Emergency Management Agency was contacted about the Environmental Assessment for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 72.214 allowing YAEC to use revised intact fuel enrichment parameters in Table A2–2 at YNPS ISFSI will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not warranted.

The request for the exemption was docketed under 10 CFR Part 71, Docket 72–31. For further details with respect to this action, see the exemption request dated May 10, 2002. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 24th day of July, 2002.

For the Nuclear Regulatory Commission.

M. Wayne Hodges,

Acting Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–19197 Filed 7–26–02; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Privacy Act of 1974; System of Records

AGENCY: Peace Corps.

ACTION: Notice of establishment of new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Peace Corps is establishing a new system of records, PC–26, entitled ''Peace Corps Computer Systems Activity and Access Records.''

DATES: Please submit any comments on or before September 9, 2002. Unless the Peace Corps receives comments that would require another determination, this system becomes effective on September 9, 2002.

ADDRESSES: Please submit any comments within 40 days of publication on or before [40 days from publication insert date] to Gayle Rucker, Office of Information Resources Management, Room 3217, 1111 20th Street, NW., Washington, DC 20526. Ms. Rucker may be reached by phone at 202–692–1310 or by email at *grucker@peacecorps.gov.* General information about the Peace Corps as an agency is provided at *www.peacecorps.gov.*

SUPPLEMENTARY INFORMATION: Section 552a(e)(4) and (11) of Title 5 of the United States Code provides that the public be given a 30-day period in which to comment on the new system. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the proposed system. In accordance with 5 U.S.C. 552a(r), Peace Corps has provided a report on this system to OMB and the Congress.

PEACE CORPS (PC–26)

SYSTEM NAME:

Peace Corps Computer Systems Activity and Access Records.

SYSTEM LOCATION:

Peace Corps offices (and other sites utilized by the Peace Corps) throughout the world. Headquartered at Peace Corps, Office of Information Resource Management, 1111 20th Street, NW., Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All or any individuals who access Peace Corps network computers or mainframe/enterprise servers, including individuals who send and receive electronic communications, access Internet sites, or access system databases, files, or applications from Peace Corps computers or sending electronic communications to Peace Corps computers; and individuals attempting to access Peace Corps computers or systems without authorization.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system of records may include: Records on the use of interoffice and Internet e-mail systems, including the e-mail address of the sender and receiver of the e-mail message, subject, date, and time; records on user access to Peace Corps networks, including user ID, date and time of log on and log off, and denials of access to unauthorized files or directories; records of Internet access from a Peace Corps computer, such as the Internet Protocol (IP) address of the computer being used to initiate the Internet connection, the site accessed, date, and time; records relating to mainframe/enterprise server access, such as user ID of the individual accessing the mainframe, date and time, and the process being run on the mainframe; records relating to verification or authorization of an individual's access to systems, files, or applications, such as user IDs, passwords, user names, title, and agency.

Logs of Internet access from a Peace Corps computer do not contain names or similar personal identifiers. However, for official government business purposes, a name may be associated with an IP address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Computer Security Act of 1987, 49 U.S.C. 1441 note, requires Federal agencies to plan for the security and privacy of their computer Systems nad the Peace Corps Act, 22 U.S.C. 2501, *et seq.*

PURPOSE(S):

The underlying raw data in this system of records is used by the Peace Corps' systems and security personnel, or persons authorized to assist these personnel, to plan and manage system services and to otherwise perform their official duties. Authorized Peace Corps managers may use the records in this system to investigate improper access or other improper activity related to computer system access; to initiate disciiplinary or other such action; and/or where the record(s) may appear to indicate a violation or potential violation of the law, to refer such record(s) to the appropriate investigative arm of Peace Corps, or other law enforcement agency for investigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USE:

A. *Disclosure for Law Enforcement Purposes.* Information may be disclosed to the appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information indicates a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

B. *Disclosure Incident to Requesting Information.* Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, or to identify the type of information requested); when necessary to obtain information relevant to a Peace Corps decision concening retention of an employee or other personnel action (other than hiring), retention of a security clearance, the letting of a contract, or the issuance or retention of a grant or other benefit.

C. *Disclosure to Requesting Agency.* Information may be disclosed to a Federal, State, local, or other public authority of the fact that this system of records contains information relevant to the requesting agency's retention of an employee, the retnetion of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for part or all of the record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

D. *Disclosure to Office of Management and Budget.* Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordiantion and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

E. *Disclosure to Congressional Offices.* Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

F. *Disclosure to Department of Justice.* Information may be disclosed for purposes of litigation, provided that in each case the disclosure is compatible with the purpose for which the records were collected. Disclosure for these

purposes may be made to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Peace Corps is authorized to appear. This disclosure may be made when: 1. The Peace Corps, or any component thereof; 2. Any employee of the Peace Corps in his or her official capacity; 3. Any employee of the Peace Corps in his or her individual capacity where the Department of Justice or the Peace Corps has agreed to represent the employee; or 4. The United States (when the Peace Corps determines that litigation is likely to affect the Peace Corps or any of its components); is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Peace Corps is deemed by the Peace Corps to be relevant and necessary to the litigation.

G. *Disclosure to the National Archives.* Information may be disclosed to the National Archives and Records Administration in records management inspections.

H. *Disclosure to Contractors, Grantee, and Others.* Information may be disclosed to contractors, grantees, consultants, or Volunteer performing, or working on a contract, service, grant, cooperative agreement, job, or other activity for the Peace Corps and who have a need to have access to the information in the performance of their duties or activities for the Peace Corps. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

I. *Disclosures for Administrative Claims, Complaints, and Appeals.* Information may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

J. *Disclosure to the Office of Personnel Management.* Information may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

K. *Disclosure in Connection with Litigation.* Information may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Peace Corps, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

In addition to the routine uses stated above in A, B, C, D, E, F, G, H, I, J, and K, the following shall apply to this system.

Disclosure to provide information to any person(s) and authorized to assist in an approved investigation of improper usage of Peace Corps systems.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic and/or paper form.

RETRIEVABILITY:

Records may be retrieved by user name, user ID, e-mail address, or other identifying search term employed, depending on the record category. The Peace Corps does not usually connect IP addresses with a person. However, in some instances, for official government business purposes, the Department may connect the IP address with an individual, and records may be retrieved by IP address.

SAFEGUARDS:

Access is limited to those who have an official need to know. Specifically, only systems and security personnel or persons authorized to assist these personnel have access to automated records and magnetic storage media. These records are kept in a locked room with controlled entry. The use of password protection identification features and other automated data processing system protection methods also restrict access. All records are located in buildings with restricted access.

RETENTION AND DISPOSAL:

Records of verification, authorization, computer system access, and other activities generated by the system shall be retained no longer than one year, unless required for management review. After one year, they are destroyed or deleted. (Records retention schedule pending approval by the Archivist of the United States.)

SYSTEM MANAGER(S) AND ADDRESS:

Office of Information Resource Management, Peace Corps, 1111 20th Street, NW., Washington, DC 20526.

NOTIFICATION PROCEDURES:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(k)(5), this system is exempted from the provisions of the Privacy Act of 1974 that permit access and correction. Individual notification of this system and declaration of acceptance of this policy appears in the form of a Privacy Screen that must be acknowledged by each individual before access is granted to use a Peace Corps computer. This prompt appears with every beginning access or initiation of systems on the computer.

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of records, should make a written request to the System Manager. Requesters will be required to provide adequate identification such as a driver's license or employee identification card, or other identiying document. The written request should provide name, assigned computer location, and a description of information being sought, including the time frame during which the record(s) may have been generated. Provide verification of identity. Identify the information being contested, the reason for contesting it, and the correction requested. In general, this information is computer-generated and is not subject to contest.

CONTESTING RECORD PROCEDURES:

See Notification Procedures above.

RECORD ACCESS PROCEDURES:

See Notification Procedures above.

RECORD SOURCE CATEGORIES:

Most records are generated internally, i.e., computer activity logs; individuals covered by the system; and management officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

This notice is issued in Washington, DC on July 23, 2002.

Gopal K. Khanna,

Chief Information Officer.

[FR Doc. 02–19112 Filed 7–19–02; 8:45 am]

BILLING CODE 6051–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection: Comment Request for Review of Expiring Information Collection: OPM 1647

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for renewal of authorization for information collection. OPM Form 1647, Combined Federal Campaign Eligibility Application, is used to review the eligibility of national, international, and local charitable organizations that wish to participate in the Combined Federal Campaign.

We estimate 1,400 Form 1647's will be completed annually. Each form takes approximately three hours to complete. The annual estimated burden is 4,200 hours.

Comments are particularly invited on:

• Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

• Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

• Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on 202/606–2150, FAX 202/418–3251, or E-mail to mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Curtis Rumbaugh, Office of CFC Operations, U.S. Office of Personnel Management, 1900 E Street, NW., Room 5450, Washington, DC 20415.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–19097 Filed 7–26–02; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25670; 813–198]

Credit Suisse First Boston, Inc.; Notice of Application

July 23, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of an application under sections 6(b) and 6(e) of the Investment Company Act of 1940 (''Act'') for an exemption from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), sections 30(c), (d), (f), (g), (i) and (j), and sections 36 through 53, and the rules and regulations thereunder.

Summary of Application: Credit Suisse First Boston, Inc. (''CSFB'') requests an order to supersede an existing order (''Prior Order'') [1] exempting CSFB and certain partnerships (''Partnerships'') formed for the benefit of key employees of CSFB and its affiliates from certain provisions of the Act. Each Partnership will be an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act.

Filing Dates: The application was filed on November 3, 1998, and amended on July 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 SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 19, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, Eleven Madison Avenue, New York, NY 10010.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 942–0581, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. CSFB, a Delaware corporation, is a subsidiary of Credit Suisse First Boston, a Swiss bank, which is, in turn, a subsidiary of Credit Suisse Group, a Swiss corporation. CSFB and its affiliates as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the ''Exchange Act'') (''Affiliates'' and, together with CSFB, the ''Credit Suisse Group'') provide a range of financial, banking, insurance, advisory, and investment services to corporations, governments, and other clients throughout the world. Credit Suisse First Boston Corporation (''CSFB Corporation''), a broker-dealer registered under the Exchange Act, is a wholly-owned subsidiary of CSFB.

2. Under the Prior Order, CSFB has offered and proposes to continue to offer various investment programs for the benefit of certain key employees. These programs may be structured as different Partnerships, or as separate plans within the same Partnership. Each Partnership will be a limited partnership or other investment vehicle formed as an ''employees'' securities company'' within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end, non-diversified, management investment company.[2] The Partnerships

[1] *Credit Suisse First Boston, Inc.,* Investment Company Act Release Nos. 22808 (Sept. 3, 1997) (notice) and 22836 (Sept. 29, 1997) (order).

[2] Applicant also may implement a pretax plan arrangement (''Pretax Plan''). In this case, no investment vehicle will be formed with respect to such Pretax Plan. Pursuant to a Pretax Plan, Credit Suisse Group will enter into arrangements with certain Eligible Employees, as defined below, of Credit Suisse Group, which will generally provide that (a) an Eligible Employee will defer a portion of his or her compensation payable by Credit Suisse Group, (b) such deferred compensation will be treated as having been notionally invested in investments designated for these purposes pursuant to the specific compensation plan, and (c) an Eligible Employee will be entitled to receive cash, securities or other property at the times and in the amounts set forth in the specific compensation plan, where the aggregate amount received by such Eligible Employee would be based upon the investment performance of the investments designated for these purposes pursuant to such compensation plan. The Pretax Plan will not actually purchase or sell any securities. Credit Suisse Group expects to offer, through Pretax Plans, economic benefits comparable to what would have been offered in an arrangement where an investment vehicle is formed. For purposes of the application, a Partnership will be deemed to be formed with respect to each Pretax Plan and each reference in the application to ''Partnership,'' ''capital contribution,'' ''General Partner,'' ''Limited Partner,'' ''loans,'' and ''Interest'' will be deemed to refer to the Pretax Plan, the notional capital contribution to the Pretax Plan, Credit Suisse

will be established primarily for the benefit of highly compensated employees of Credit Suisse Group as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership will be voluntary.

3. The general partner of each Partnership will be an Affiliate of CSFB (''General Partner''). The General Partner will manage, operate, and control each of the Partnerships. The General Partner will be authorized to delegate investment management responsibility to a Credit Suisse Group entity, a committee of Credit Suisse Group employees, or certain unaffiliated third-party investment managers in connection with a ''third party sponsored program.'' [3] The ultimate responsibility for the Partnerships' investments will remain with the General Partner. Any Credit Suisse Group entity that is delegated the responsibility of making investment decisions for a Partnership will register as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') if required under applicable law. The General Partner, Credit Suisse Group or any employees of the General Partner or Credit Suisse Group may be entitled to receive a performance-based fee (such as a ''carried interest'') based on the gains and losses of the investment program or of the Partnership's investment portfolio.[4]

4. Interests in the Partnerships (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''Securities Act''), or Regulation D under the Securities Act, and will be sold only to ''Eligible Employees'' and ''Qualified Participants,'' in each case as defined below, or to Credit Suisse Group entities (collectively, ''Participants'').[5] Prior to offering Interests to an Eligible Employee, the General Partner must reasonably believe that the Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risks of participating in the Partnership without the benefit of regulatory safeguards.

5. An ''Eligible Employee'' is (a) an individual who is a current or former employee, officer, director, or ''Consultant'' of Credit Suisse Group and, except for certain individuals who manage the day-to-day affairs of the Partnership in question (''Managing Employees'') [6] and a limited number of other employees of Credit Suisse Group,[7] meets the standards of an accredited investor under rule 501(a)(6) of Regulation D under the Securities Act, or (b) an entity that is a current or former ''Consultant'' of Credit Suisse Group and meets the standards of an accredited investor under rule 501(a) of Regulation D.[8] Eligible Employees will be experienced professionals in the investment banking and securities businesses, or in related administrative, financial, accounting, legal, or operational activities.

6. A ''Qualified Participant'' (a) is an Eligible Family Member or Qualified Investment Vehicle (in each case as defined below) of an Eligible Employee, and (b) if the individual or entity is purchasing an Interest from a Partnership, comes within one of the categories of an ''accredited investor'' under rule 501(a) of Regulation D. An ''Eligible Family Member'' is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee, including step and adoptive relationships. A ''Qualified Investment Vehicle'' is (a) a trust of which the trustee, grantor and/or beneficiary is an Eligible Employee, (b) a partnership, corporation or other entity controlled by an Eligible Employee,[9] or (c) a trust or other entity established solely for the benefit of Eligible Family Members of an Eligible Employee.

7. The terms of a Partnership will be fully disclosed to each Eligible Employee and, if applicable, to a Qualified Participant of the Eligible Employee, in a partnership agreement (the ''Partnership Agreement''), which will be furnished at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to each Participant within 120 days or as soon as practicable after the end of its fiscal year, except for any Partnership that was formed to make a single portfolio investment (in which case audited financial statements will be prepared for either the Partnership or the entity that is the single portfolio investment).[10] In

Group, a participant of the Pretax Plan, notional loans, and participation rights in the Pretax Plan, respectively.

[3] In a ''third party sponsored program,'' a Partnership will co-invest with an investment fund, pooled investment vehicle or separate account for which entities or persons unaffiliated with the Credit Suisse Group are the sponsors or over which such entities or persons exercise investment discretion. Under a third party sponsored program, a Partnership will only be permitted to invest if a Credit Suisse Group entity will co-invest with the Partnership in the portfolio investments making up the third party sponsored program.

[4] A carried interest is an allocation to the General Partner, Limited Partner or the Credit Suisse Group entity acting as the investment adviser to a Partnership based on net gains in addition to the amount allocable to such entity in proportion to its capital contributions. A General Partner, Limited Partner or Credit Suisse Group entity that is registered as an investment adviser under the Advisers Act may charge a carried interest only if permitted by rule 205–3 under the Advisers Act. Any carried interest paid to a General Partner, Limited Partner or Credit Suisse Group entity that is not registered under the Advisers Act also will comply with rule 205–3 as if such General Partner, Limited Partner or Credit Suisse Group entity were so registered.

[5] If applicant implements a Pretax Plan, participation rights in such Pretax Plan will only be offered to Eligible Employees who are current employees or Consultants, as defined below, of Credit Suisse Group.

[6] A Managing Employee may invest in a Partnership if he or she meets the definition of ''knowledgeable employee'' in rule 3c–5(a)(4) under the Act as if the Partnership were a ''covered company'' within the meaning of the rule.

[7] With respect to any Partnership, up to 35 employees (including Managing Employees, except to the extent that a Managing Employee meets the requirements of rule 501(a)(4) under the Securities Act), may be permitted to invest his or her own funds in the Partnership if, at the time of the employee's investment, he or she (a) has a graduate degree in business, law, or accounting, (b) has a minimum of five years of consulting, investment banking or similar business experience, and (c) has had reportable income from all sources of at least $100,000 in each of the two most recent years and a reasonable expectation of income from all sources of at least $140,000 in each year in which such person will be committed to make investments in a Partnership. In addition, such an employee will not be permitted to invest in any year more than 10% of his or her income from all sources for the immediately preceding year in the aggregate in such Partnership and in all other partnerships in which he or she has previously invested.

[8] A ''Consultant'' is a person or entity whom Credit Suisse Group has engaged on retainer to provide services and professional expertise on an ongoing basis as a regular consultant or as a business or legal adviser and who shares a community of interest with Credit Suisse Group and Credit Suisse Group employees.

[9] The inclusion of partnerships, corporations, or other entities controlled by an Eligible Employee in the definition of ''Qualified Investment Vehicle'' is intended to enable Eligible Employees to make investments in the Partnerships through personal investment vehicles over which they exercise investment discretion or vehicles the management or affairs of which they otherwise control. In the case of a partnership, corporation, or other entity controlled by a Consultant entity, individual participants will be limited to senior level employees, members, or partners of the Consultant who will be required to qualify as an ''accredited investor'' under rule 501(a)(6) of Regulation D and who will have access to the directors and officers of the General Partner.

[10] If applicant implements a Pretax Plan, Eligible Employees participating in such Pretax Plan will be furnished with a copy of the Pretax Plan, which will set forth at a minimum the same terms of the proposed investment program as those that would have been set forth in a Partnership Agreement for a Partnership. The Credit Suisse Group will prepare an audited informational statement with respect to the investments deemed to be made by such Pretax Plan, including, with respect to each investment, the name of the portfolio company and the amount deemed invested by such Pretax Plan in the portfolio company. The Credit Suisse Group will send each participant of such Pretax Plan a separate statement prepared based on the audited

Continued

addition, as soon as practicable after the end of each tax year of a Partnership, each Participant will receive a report showing the Participant's share of income, credits, deductions, and other tax items.

8. Interests in a Partnership will be non-transferable except with the prior written consent of the General Partner.[11] No person will be admitted into a Partnership unless the person is an Eligible Employee, a Qualified Participant of an Eligible Employee, or a Credit Suisse Group entity. No sales load will be charged in connection with the sale of Interests.

9. An Eligible Employee's interest in a Partnership may be subject to repurchase or cancellation if: (a) The Eligible Employee's relationship with Credit Suisse Group is terminated for cause; (b) the Eligible Employee becomes a consultant to or joins any firm that the General Partner determines, in its reasonable discretion, is competitive with any business of Credit Suisse Group; or (c) the Eligible Employee voluntarily resigns from employment with Credit Suisse Group. Upon repurchase or cancellation, the General Partner will pay to the Eligible Employee at least the lesser of (a) the amount actually paid by the Eligible Employee to acquire the Interest (less prior distributions, plus interest), and (b) the fair market value of the Interest as determined at the time of repurchase or cancellation by the General Partner. The terms of any repurchase or cancellation will apply equally to any Qualified Participant of an Eligible Employee.

10. Subject to the terms of the applicable Partnership Agreement, a Partnership will be permitted to enter into transactions involving (a) a Credit Suisse Group entity, (b) a portfolio company, (c) any Partner or person or entity affiliated with a Partner, (d) an investment fund or separate account that is organized for the benefit of investors who are not affiliated with Credit Suisse Group and over which a Credit Suisse Group entity will exercise investment discretion (''Third Party Fund''), or (e) any person or entity who is not affiliated with Credit Suisse Group and is a partner or other investor in a Third Party Fund or a third party sponsored program that is not affiliated with Credit Suisse Group (a ''Third Party Investor''). Prior to entering into any of these transactions, the General Partner must determine that the terms are fair to the Partners.

11. A Partnership will not invest more than 15% of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds). A Partnership will not acquire any security issued by a registered investment company if immediately after the acquisition, the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

12. A Credit Suisse Group entity (including the General Partner) acting as agent or broker may receive placement fees, advisory fees, or other compensation from a Partnership or a portfolio company in connection with a Partnership's purchase or sale of securities, provided that such placement fees, advisory fees, or other compensation can be deemed to be ''usual and customary.'' Such fees or other compensation will be deemed ''usual and customary'' only if (a) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds or Third Party Investors who are similarly purchasing or selling securities, (b) the fees or other compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds or Third Party Investors, and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds and Third Party Investors. Credit Suisse Group entities, including the General Partner, also may be compensated for services to entities in which the Partnerships invest and to entities that are competitors of these entities, and may otherwise engage in normal business activities.

Applicant's Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the SEC will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) of the Act provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicant requests an order under sections 6(b) and 6(e) of the Act exempting the Partnerships from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), sections 30(c), (d), (f), (g), (i) and (j), and sections 36 through 53, and the rules and regulations under those sections.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicant requests an exemption from section 17(a) to permit: (a) A Credit Suisse Group entity or a Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership; (b) any Partnership to invest in or engage in any transaction with any Credit Suisse Group entity, acting as principal, (i) in which the Partnership, any company controlled by the Partnership, or any Credit Suisse Group entity or Third Party Fund has invested or will invest, or (ii) with which the Partnership, any company controlled by the Partnership, or any Credit Suisse Group entity or Third Party Fund is or will become affiliated; and (c) any Third Party Investor, acting as principal, to engage in any transaction directly or indirectly with a Partnership or any company controlled by the Partnership.

4. Applicant states that an exemption from section 17(a) is consistent with the protection of investors and is necessary to promote the purpose of the

informational statement within 120 days after the end of the fiscal year of the Credit Suisse Group or as soon as practicable thereafter.

[11] If applicant implements a Pretax Plan, an Eligible Employee's participation rights in such plan may not be transferred, other than to a Qualified Participant in the event of the Eligible Employee's death.

Partnerships. Applicant states that the Participants in each Partnership will be fully informed of the extent of the Partnership's dealings with Credit Suisse Group. Applicant also states that, as professionals employed in the investment banking and securities businesses, Participants will be able to understand and evaluate the attendant risks. Applicant asserts that the community of interest among the Participants and Credit Suisse Group will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicant requests relief to permit affiliated persons of each Partnership, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Partnership or a company controlled by the Partnership is a participant.

6. Applicant submits that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with Credit Suisse Group's large capital resources, and its experience in structuring complex transactions. Applicant also submits that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicant contends that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicant notes that each Partnership will be organized for the benefit of Eligible Employees as an incentive for them to remain with Credit Suisse Group and for the generation and maintenance of goodwill. Applicant believes that, if co-investments with Credit Suisse Group are prohibited, the appeal of the Partnerships would be significantly diminished. Applicant asserts that Eligible Employees wish to participate in co-investment opportunities because they believe that (a) the resources of Credit Suisse Group enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate, (b) investments made by Credit Suisse will not be generally available to investors even of the financial status of the Eligible Employees, and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicant asserts that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicant states that the concern that permitting co-investments by Credit Suisse Group and a Partnership might lead to less advantageous treatment of the Partnership should be mitigated by the fact that Credit Suisse Group will be acutely concerned with its relationship with the investors in the Partnership, and the fact that senior officers and directors of Credit Suisse Group entities will be investing in the Partnership. In addition, applicant asserts that strict compliance with section 17(d) would cause the Partnership to forego investment opportunities simply because a Participant or other affiliated person of the Partnership (or any Affiliate of the affiliated person) made a similar investment.

8. Co-investments with Third Party Funds, or by a Credit Suisse Group entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3 below. Applicant notes that it is common for a Third Party Fund to require that Credit Suisse Group invest its own capital in Third Party Fund investments, and that Credit Suisse Group investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicant believes it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships, and that the Third Party Fund not be burdened or otherwise affected by activities of the Partnerships. In addition, applicant asserts that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnership's relationship to Credit Suisse Group. Applicant contends that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by Credit Suisse Group in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships and a Third Party Fund.

9. Section 17(e) of the Act and rule 17e–1 under the Act limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicant requests an exemption from section 17(e) to permit a Credit Suisse Group entity (including the General Partner) that acts as an agent or broker to receive placement fees, advisory fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation can be deemed ''usual and customary.'' Applicant states that for the purposes of the application, fees or other compensation will be deemed ''usual and customary'' only if (a) the Partnership is purchasing or selling securities alongside other unaffiliated third parties, including Third Party Funds or Third Party Investors, who are similarly purchasing or selling securities, (b) the fees or other compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds and Third Party Investors, and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds or Third Party Investors. Applicant asserts that, because Credit Suisse Group does not wish it to appear as if it is favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicant asserts that the fees or other compensation paid by a Partnership to a Credit Suisse Group entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) under the Act requires that a majority of directors who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Rule 17e–1(c) under the Act requires that a majority of the directors not be interested persons, that those directors select and nominate other disinterested directors and that any person who acts as legal counsel for the disinterested directors be an independent legal counsel. Applicant requests an exemption from rule 17e–1 to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the General Partner who are not interested persons take actions and make determinations as set forth in paragraph (b) of the rule and without having to satisfy the standards set forth in paragraph (c) of the rule. Applicant states that because all the directors of the General Partner will be affiliated persons, without the relief requested, a

Partnership could not comply with rule 17e–1. Applicant states that each Partnership will comply with rule 17e–1(b) by having a majority of the directors of the Partnership take actions and make approvals as are set forth in rule 17e–1. Applicant states that each Partnership will comply with all other requirements of rule 17e–1.

11. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–1 under the Act imposes certain requirements when the custodian is a member of a national securities exchange. Applicant requests an exemption from section 17(f) and rule 17f–1 to permit a Credit Suisse Group entity to act as custodian of Partnership assets without a written contract, as would be required by rule 17f–1(a). Applicant also requests an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicant states that, because of the community of interest between Credit Suisse Group and the Partnerships and the existing requirement for an independent audit, compliance with these requirements would be unnecessarily burdensome and expensive. Applicant will comply with all other requirements of rule 17f–1.

12. Section 17(g) of the Act and rule 17g–1 under the Act generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicant requests exemptive relief to permit the General Partner's directors, who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicant states that, because all directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the Partnership's directors take actions and make determinations as are set forth in rule 17g–1. Applicant also states that each Partnership will comply with all other requirements of rule 17g–1.

13. Section 17(j) of the Act and paragraph (b) of rule 17j–1 under the Act make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicant requests an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicant requests an exemption from the requirements in sections 30(a), 30(b), and 30(e) of the Act, and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicant contends that the forms prescribed by the Commission for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Participants. Applicant requests exemptive relief to the extent necessary to permit each Partnership to report annually to its Participants. Applicant also requests an exemption from section 30(h) of the Act to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4, and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicant asserts that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 under the Act to which a Partnership is a party (the ''Section 17 Transactions'') will be effected only if the General Partner determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners and do not involve overreaching of such Partnership or its Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Partners, such Partnership's organizational documents, and such Partnership's reports to its Partners. In addition, the General Partner will record and preserve a description of all Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based, and the basis therefor. All records relating to an investment program will be maintained until the termination of such investment program and at least two years thereafter, and will be subject to examination by the SEC and its staff.[12]

2. In connection with the section 17 Transactions, the General Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for such Partnership, or any affiliated person of such a person, promoter, or principal underwriter.

3. The General Partner will not invest the funds of any Partnership in any investment in which a ''Co-Investor'' (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and a Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Co-Investor. The term ''Co-Investor'' with respect to any Partnership means any person who is: (a) An ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party Fund); (b) a Credit Suisse Group entity; (c) an officer or director of a Credit Suisse Group entity; or (d) an entity (other than a Third Party Fund) in which the General Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which such Co-Investor is a direct or

[12] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of such Co-Investor, including step and adoptive relationships, or a trust or other investment vehicle established for any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder; (e) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities; or (f) when the investment is comprised of securities that are government securities as defined in section 2(a)(16) of the Act.

4. Each Partnership and the General Partner will maintain and preserve, for the life of such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Participants in such Partnership, and each annual report of such Partnership required to be sent to such Participants, and agree that all such records will be subject to examination by the SEC and its staff.[13]

5. The General Partner of each Partnership will send to each Participant in such Partnership who had an interest in any capital account of the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants, except in the case of a Partnership formed to make a single portfolio investment. In such cases, financial statements will be unaudited, but each Participant will receive financial statements of the single portfolio investment audited by such entity's independent accountants. At the end of each fiscal year and at other times as necessary in accordance with customary practice, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of such Partnership will send a report to each person who was a Participant in such Partnership at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Participant of his, her or its U.S. federal and state income tax returns, and a report of the investment activities of the Partnership during that fiscal year.

6. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with such Partnership by reason of a 5% or more investment in such entity by a Credit Suisse Group director, officer, or employee, such individual will not participate in such Partnership's determination of whether or not to effect such purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19121 Filed 7–26–02; 8:45 am]

BILLING CODE 8010–01–P

[13] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

eConnect; Order of Suspension of Trading

July 25, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of eConnect, a Nevada corporation. Questions have been raised about the accuracy of publicly disseminated information concerning, among other things, the value of an investment of corporate bonds in eConnect by another company; the projected opening date of Bank eConnect; the value of a purchase order from another company for eConnect's eCashPads and the ability of that company to pay for the eCashPads.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, July 25, 2002, through 11:59 p.m. EDT, on August 7, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19219 Filed 7–25–02; 12:31 pm]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–12741]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; addition to agenda.

SUMMARY: The Coast Guard is modifying the agenda for the July 29–30, 2002, meeting of the Great Lakes Pilotage Advisory Committee (GLPAC) to add member discussion and selection of a candidate to recommend to the Secretary of Transportation for appointment as the seventh GLPAC member. The meeting will be open to the public.

DATES: GLPAC will meet on Monday, July 29, 2002, from 1:30 p.m. to 5 p.m. and on Tuesday, July 30, 2002, from 9 a.m. to 4 p.m. The meeting may close early if all business is finished.

ADDRESSES: GLPAC will meet in Deck Room B of the Maritime Institute of Technology, 5700 Hammonds Ferry Road, Linthicum Heights, Maryland. Send written material and requests to make oral presentations to Margie Hegy, Commandant (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Margie Hegy, Executive Director of GLPAC, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. We had planned to have the selection of the seventh member at a closed session of the GLPAC, however we have reevaluated that decision in order to expedite the selection of this member. The revised agenda is printed below.

Agenda of Meeting

The agenda includes the following:

(1) Automatic Identification System (AIS) Technology and Training Requirements.

(2) Update on the Great Lakes Pilotage Office Relocation Study.

(3) Update on Bridge Hour Study.

(4) Discussion and Selection of 7th GLPAC Member to recommend to Secretary of Transportation for appointment.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: July 23, 2002.

Paul J. Pluta,

Rear Admiral, Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–19139 Filed 7–24–02; 4:37 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Wiscasset and Edgecomb, ME

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in the Towns of Wiscasset and Edgecomb, Sagadahoc County, Maine.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Hasselmann, Manager, Right of Way and Environment, Maine Division, Federal Highway Administration, 40 Western Ave. Augusta, Maine 04330, Tel. 207/622–8355, ext. 24; Edward W. Hanscom, P.E., Project Manager, Maine Department of Transportation, State House Station 16, Augusta, Maine 04333–0016, Tel. 207/624–3320.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maine Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve public safety, increase mobility and reduce congestion through the U.S. Route 1 corridor in the Wiscasset-Edgecomb area. The purpose of this EIS is to establish a preferred alternative that will address the study purpose and need. Alternatives under consideration include (1) taking no action, (2) transportation system management including upgrades within the existing highway facilities and construction of a limited access highway on new location.

This project began in 1999 as an environmental assessment and the first public meeting was held in December 1999. An agency scoping meeting was held April 10, 2000 in Augusta, Maine and public scoping meetings were held in Wiscasset, Maine on May 24, 2000 and November 1, 2000.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: July 17, 2002.

Paul L. Lariviere,

Division Administrator, Federal Highway Administration, Augusta, Maine.

[FR Doc. 02–19027 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2002–12907.

Applicant: Burlington Northern Santa Fe Railway, Mr. DJ Mitchell II, Assistant Vice President, 2600 Lou Menk Drive, P.O. Box 961034, Fort Worth, Texas 76161–0034.

Burlington Northern Santa Fe Railway (BNSF) seeks temporary relief from the requirements of Part 236, Section 236.566, of the Rules, Standard and Instructions, to the extent that BNSF be permitted to operate the non-equipped steam locomotive ATSF 3751, as the lead locomotive in consist, in automatic train stop (ATS) territory between Barstow, California, milepost 745.9 and Needles, California, milepost 578.0, on the Southern California Division, Needles Subdivision, and between Needles, California, milepost 578.0 and Williams, Arizona, milepost 374.3, on the Southwest Division, Seligman Subdivision, during August 19 through August 26, 2002, restricted to a maximum authorized speed of 70 mph.

Applicant's justification for relief: The National Railroad Historical Society is planning to operate a special train, with Amtrak as the contract operator, from Los Angeles, California to Williams, Arizona and return, during August 19–26, 2002, routed over the ATS equipped trackage.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Due to the short time constraints, communications must be received as soon as possible from the date of this notice and will be considered by the FRA as far as practicable before final action is taken. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. 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.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on July 23, 2002.

Edward W. Pritchard,

Acting Director, Office of Safety Assurance and Compliance.

[FR Doc. 02–19133 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 26, 2002. No comments were received.

DATES: Comments must be submitted on or before August 28, 2002.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

FOR FURTHER INFORMATION CONTACT: Kenneth Kline, Maritime Administration, 400 Seventh Street, Southwest, Washington, DC 20590. Telephone: 202–366–5744; FAX: 202–366–7901, or e-mail: *kenneth.kline@marad.dot.gov.* Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Obligation Guarantees—46 CFR part 298, Title XI.

OMB Control Number: 2133–0018.

Type of Request: Extension of currently approved collection.

Affected Public: Individuals/businesses interested in obtaining loan guarantees for construction or reconstruction of vessels satisfying criteria under the Merchant Marine Act.

Form(s): MA–163, MA–163A.

Abstract: In accordance with the Merchant Marine Act, 1936, MARAD is authorized to execute a full faith and credit guarantee by the United States of debt obligations issued to finance or refinance the construction or reconstruction of vessels. In addition, the program allows for financing shipyard modernization and improvement projects.

Annual Estimated Burden Hours: 1470 hours.

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 will have practical utility; (b) the accuracy of the agency'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.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on July 24, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19102 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12911]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel AMULET.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 28, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12911. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: AMULET. *Owner:* Charter Cruises, LLC.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''62-foot Little Harbor sloop; sleeps 6 plus 2 in crew; *Displacement:* 88, 000 lbs.; *Ballast:* 31, 5000 lbs.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''Charter vessel cruising; East Coast of United States and Caribbean.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1982. *Place of construction:* Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''No impact on other commercial passenger vessels.''

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* ''No impact on U.S. Shipyards.''

Dated: July 23, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19041 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12912]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CORWITH CRAMER.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 28, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12912. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: CORWITH CRAMER. *Owner:* Sea Education Association (SEA).

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''LOA: 98 FEET; *Beam:* 26 feet; *Draft:* 13 feet; *ITC tonnage:* 158 gross tons, 47 net tons.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''Upon receiving the waiver we intend to use the CORWITH CRAMER to carry no more than twelve passengers for hire throughout the United States coastal waters on an occasional basis to enhance our regular operations as a sailing school vessel. By U.S. coastal waters we include the U.S. east coast, west coast, Gulf of Mexico coast as well as the coastal waters of Hawaii and Alaska. Our SSV operations occur offshore throughout the Atlantic and Pacific waters most of the year but approximately 60 days may be spent operating with passengers for hire in the U.S. coastal waters. Any particular port visit is usually less than one week in length. The not more than 12 passengers would include people that SEA invites aboard based on their interest in our vessel and on board education research programs.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1987. *Place of construction:* ASTACE Shipyard in Bilbao, Spain.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''Granting a waiver for the CORWITH CRAMER will have no adverse impact on other commercial passenger vessel operators for two reasons. First, we will invite only passengers with an interest in our specific vessel and programs and second; we will spend limited time in any one U.S. coastal port as our operations carry us throughout a vast latitudinal region annually.''

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* ''This waiver will have no negative impact on U.S. shipyards as we currently conduct all of our maintenance and repair in U.S. shipyards. It is possible that we will use a wider variety of U.S. shipyards than the three where we currently work.''

Dated: July 23, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19043 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12922]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GITANA.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an

unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 28, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12922. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* GITANA. *Owner:* Western Maritime, Inc.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''91′ sailboat, with accommodations to sleep 6 guests plus crew accommodations for 4. Our International Tonnage indicates that the gross tonnage is 74 and the net is 22.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''The intended use for the vessel is recreation/charter. The geographic regions of intended operation are the Caribbean, East Coast of the U.S., Central America, Northwest Mediterranean (Spain, Balearics, France).''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1991. *Place of construction:* Gosport, Hants, United Kingdom.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''The waiver would have no effect on other commercial passenger vessel operators. We are a recreational vessel, which charters less than 8 times a year.''

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* ''If we get the waiver, we would be able to have work done in the U.S., which would help the U.S. shipyards.''

Dated: July 24, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19101 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12923]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SHANACHIE.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 28, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12923. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: SHANACHIE. Owner: William O'Connell.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''Capacity: Gross Tonnage 25; Net Tonnage 23 per 46 U.S.C. 14502.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''Atlantic Coast and Chesapeake Bay regions. The vessel will operate in New England waters during the summer months and Florida waters during the winter months with interim stops in the Chesapeake Bay.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1984. Place of construction: Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''This vessel will carry a maximum of six passengers in private charter visiting small local marinas and will not impact commercial passenger vessel operators. Commercial passenger vessel operators do not operate in this mode.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''The granting of this waiver will not impact U.S. shipyards because of the very limited capacity of this vessel.''

Dated: July 23, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19103 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12913]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel WESTWARD.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 28, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12913. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: WESTWARD. *Owner:* Sea Education Association (SEA).

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''LOA: 94 Feet, *Beam:* 22 feet, *Draft:* 12 feet, *ITC tonnage:* 114 gross tons, 34 net tons.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''Upon receiving the waiver we intend to use the WESTWARD to carry no more than twelve passengers for hire throughout the United States coastal waters on an occasional basis to enhance our regular operations as a sailing school vessel. By U.S. coastal waters we include the U.S. east coast, west coast, Gulf of Mexico coast as well as the coastal waters of Hawaii and Alaska. Our SSV operations occur offshore throughout the Atlantic and Pacific waters most of the year but approximately 60 days may be spent operating with passengers for hire in the U.S. coastal waters. Any particular port visit is usually less than one week in length. The not more than 12 passengers would include people that SEA invites aboard based on their interest in our vessel and on board education research programs.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1961. *Place of construction:* Abeking-Rasmussen Shipyard in Lemwerder, Germany.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''Granting a waiver for the WESTWARD will have no adverse impact on other commercial passenger vessel operators for two reasons. First, we will invite only passengers with an interest in our specific vessel and programs and second; we will spend limited time in any one U.S. coastal port as our operations carry us throughout a vast latitudinal region annually.''

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* ''This waiver will have no negative impact on U.S. shipyards as we currently conduct all of our maintenance and repair in U.S. shipyards. It is possible that we will use a wider variety of U.S. shipyards than the three where we currently work.''

Dated: July 23, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–19042 Filed 7–26–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Indexing the Annual Operating Revenues of Railroads

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. This index is developed by the Bureau of Labor Statistics (BLS). This index will be used to deflate revenues for comparison with established revenue thresholds.

The base year for railroads is 1991. The inflation index factors are presented as follows:

RAILROAD FREIGHT INDEX

Year	Index	Deflator percent
1991	409.50	[1] 100.00
1992	411.80	99.45
1993	415.50	98.55
1994	418.80	97.70
1995	418.17	97.85
1996	417.46	98.02
1997	419.67	97.50
1998	424.54	96.38
1999	423.01	96.72
2000	428.64	95.45
2001	436.48	93.73

[1] Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR 1201*, 8 I.C.C. 2d 625 (1992), raised the revenue classification level for Class I railroads from $50 million to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also revised to reflect a rebasing from $10 million (1978 dollars) to $20 million (1991 dollars).

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Scott Decker (202)565–1531. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

Decided: July 19, 2002.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18850 Filed 7–26–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–LTC

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 1099–LTC, Long-term Care and Accelerated Death Benefits.

DATES: Written comments should be received on or before September 27, 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 Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Long-Term Care and Accelerated Death Benefits.

OMB Number: 1545–1519.

Form Number: 1099–LTC.

Abstract: Under the terms of Internal Revenue Code sections 7702B and 101g, qualified long-term care and accelerated death benefits paid to chronically ill individuals are treated as amounts received for expenses incurred for medical care. Amounts received on a per diem basis in excess of $175 per day are taxable. Code section 6050Q requires all such amounts to be reported.

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, individuals or households, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Responses: 79,047.

Estimated Time Per Response: 14 min.

Estimated Total Annual Burden Hours: 18,181.

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: July 16, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–19125 Filed 7–26–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 67, No. 145

Monday, July 29, 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 HEALTH AND HUMAN SERVICES

Office of the Secretary

Cooperative Agreement To Establish a National Poverty Research Center and Area Poverty Research Centers: Correction

Correction

In notice document 02–17990 appearing on page 46985 in the issue of Wednesday, July 17, 2002, make the following correction:

On page 46985, in the third column, the fourth line should read ''(c) Research Agenda''.

[FR Doc. C2–17990 Filed 7–26–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
July 29, 2002

Part II

Federal Election Commission

11 CFR Parts 100, et al.

Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 102, 104, 106, 108, 110, 114, 300, and 9034

[Notice 2002 –11]

Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising its rules relating to funds raised, received, and spent by party committees under the Federal Election Campaign Act of 1971, as amended (''FECA'' or the ''Act''). The revisions are based on the Bipartisan Campaign Reform Act of 2002 (''BCRA''), which adds to the Act new restrictions and prohibitions on the receipt, solicitation, and use of certain types of non-Federal funds, which are commonly referred to as ''soft money.'' BCRA and the revised rules prohibit national parties from raising or spending non-Federal funds. They also permit State, district, and local party committees to fund certain ''Federal election activity,'' including certain voter registration and get-out-the-vote (''GOTV'') drives, with money raised pursuant to new limitations, prohibitions, and reporting requirements under BCRA, or with a combination of funds subject to various requirements of the Act and BCRA. They also address fundraising by Federal and non-Federal candidates and Federal officeholders on behalf of political party committees, other candidates, and non-profit organizations. Further information is contained in the Supplementary Information that follows.

DATES: The effective date is November 6, 2002, except for 11 CFR 106.7(a) which is effective January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Vergelli, Acting Assistant General Counsel; or Attorneys Mr. Anthony T. Buckley, Mr. Jonathan M. Levin, Ms. Dawn Odrowski, Ms. Anne A. Weissenborn, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 (''BCRA''), Public Law 107–155, 116 Stat. 81 (March 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended (''FECA'' or the ''Act''), 2 U.S.C. 431 *et seq.* This is the first of a series of rulemakings the Commission is undertaking this year in order to meet the rulemaking deadlines set out in BCRA. These rules address BCRA's new limitations on party, candidate, and officeholder solicitation and use of non-Federal funds.[1]

Section 402(c)(2) of BCRA establishes a 90-day deadline for the Commission to promulgate these rules. Since BCRA was signed into law on March 27, 2002, the 90-day deadline was June 25, 2002.[2] The Commission promulgated these rules on June 22, 2002. The new rules will take effect on November 6, 2002, the day following the November 2002 general election, except rules that take effect after the transition period. 2 U.S.C. 431 note.

Because of the extremely tight deadline for promulgating these rules, the Commission adhered to a shorter-than-usual timeline for receiving and considering public comments. The Notice of Proposed Rulemaking (''NPRM'') on which these rules are based was published in the **Federal Register** on May 20, 2002. 67 FR 35654 (May 20, 2002). Comments were received from the Alliance for Justice; the American Federation of Labor and Congress of Industrial Organizations (''AFL-CIO''); the American Federation of State, County, and Municipal Employees (''AFSCME''); the Association of State Democratic Chairs (''ASDC''); Dr. Peter Bearse; the California Republican Party; the Campaign and Media Legal Center; the Center for Responsive Politics (''CRP'') and FEC Watch (joint comment); Common Cause and Democracy 21 (joint comment); the Connecticut Republican State Central Committee; the Democratic National Committee (''DNC''), the Democratic Senatorial Campaign Committee (''DSCC'') and the Democratic Congressional Campaign Committee (''DCCC'') (joint comment); Development Strategies Corporation; Benjamin L. Ginsberg, Esq.; Ms. Janice P. Johnson; the Latino Coalition and National Taxpayer Network, Inc. (joint comment); the Michigan Democratic Party (''MDP''); Mindshare Internet Campaigns L.L.C.; the NAACP National Voter Fund (''NAACP NVF''); the National Republican Congressional Committee (''NRCC''); OMB Watch; Senators John S. McCain and Russell D. Feingold, and Representatives Christopher Shays and Marty Meehan (joint comment), and a supplemental comment from Senator McCain; Representative Bob Ney; Norman D. Petrick; and the Republican National Committee (''RNC'').

The Commission held a public hearing on the NPRM on June 4 and 5, 2002, at which it heard testimony from representatives of the ASDC; the AFL–CIO; the Campaign and Media Legal Center; Common Cause and Democracy 21; CRP and FEC Watch; the DNC, DSCC and DCCC; the Latino Coalition and the Taxpayer Network, Inc.; NAACP NVF; the MDP; the RNC, the RNCC, and the Republican State Chairmen; and Mr. Ginsberg. Please note that, for purposes of this document, the terms ''commenter'' and ''comment'' cover both written comments and oral testimony at the public hearing.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money were transmitted to Congress on July 16, 2002.

Explanation and Justification

I. Terminology

Because the term ''soft money'' is used by different people to refer to a wide variety of funds under different circumstances, the Commission is using the term ''non-Federal funds'' in the final rules rather than the term ''soft money.'' BCRA does not use the term ''soft money'' except in the heading of Title I and the headings within Title IV. Nonetheless, the Commission sought comment on whether use of the term ''soft money'' would in some instances be preferable.

Not all commenters addressed this issue, and several of those who did not address the issue used the term ''soft money'' throughout their comments. Most of those who addressed this question, however, urged the Commission to use the terms ''Federal funds'' and ''non-Federal funds'' in

[1] Future rulemakings will address: (1) Electioneering communications and issue ads; (2) coordinated and independent expenditures; (3) the so-called ''millionaires'' amendment,'' which increases contribution limits for congressional candidates facing self-financed candidates on a sliding scale, based on the amount of personal funds the opponent contributes to his or her campaign; (4) the increase in contribution limits; and (5) other new and amended provisions, including contribution prohibitions and reporting. This last rulemaking will address contributions by minors, foreign nationals, and U.S. nationals; inaugural committees; fraudulent solicitations; disclaimers; personal use of campaign funds; and civil penalties. BCRA's impact on national nominating conventions will be addressed in a separate rulemaking.

[2] BCRA's deadline for promulgation of the remaining rules is 270 days after the date of enactment, or December 22, 2002.

place of what they characterized as the often-misunderstood term ''soft money.'' One commenter urged the Commission to use the terms ''regulated'' and ''unregulated'' funds, arguing that the terms ''Federal'' and ''non-Federal'' funds are also confusing. However, the terms ''Federal'' and ''non-Federal'' have been used by the Commission for many years throughout the rules and are thus familiar to those active in this area. *See,* for example, 11 CFR 102.5 (''Federal'' and ''non-Federal'' accounts); 11 CFR 106.5 (''Federal'' and ''non-Federal'' disbursements). The terms ''regulated'' and ''unregulated'' could also be subject to different interpretations. Moreover, non-Federal funds are regulated by State law. The Commission is, therefore, using the terms ''Federal'' and ''non-Federal'' throughout the text of the regulations and the accompanying Explanation and Justification.

II. The Statutory Framework

The Act limits the amount that individuals can contribute to candidates, political committees, and political parties for use in Federal elections. 2 U.S.C. 441a. The Act also prohibits corporations and labor organizations from contributing their general treasury funds for these purposes. 2 U.S.C. 441b. Contributions from national banks, 2 U.S.C. 441b(a); government contractors, 2 U.S.C. 441c; foreign nationals, 2 U.S.C. 441e; and minors, new 2 U.S.C. 441k, as enacted by BCRA; as well as contributions made in the name of another, 2 U.S.C. 441f; are also prohibited. These strictures regulate what is often referred to as ''hard money,'' or Federal funds.

Some donations that do not meet the FECA hard money requirements, for example, corporate and labor organization general treasury contributions, may not be used for Federal elections, and are referred to as non-Federal funds. Non-Federal funds may not be used for the purpose of influencing any election for Federal office. Funds raised that are used by State or local parties or State or local candidates on non-Federal elections are governed by State or local law. Prior to BCRA's revisions, the FECA permitted national party committees, Federal candidates, and officeholders to raise money not subject to some of the Act's source limitations and prohibitions. Beginning November 6, 2002, under BCRA, national party committees ''may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act.'' 2 U.S.C. 441i(a).

BCRA also requires State, district, and local political party committees to pay for ''Federal election activities,'' which is a new term introduced and defined by BCRA, 2 U.S.C. 431(20), with entirely Federal funds or, in some cases, a mix of Federal funds and a new type of non-Federal funds, which the rules call ''Levin funds.'' These two provisions are related in that the latter is intended to prevent evasion of the former. A State, district, or local political party committee may not evade the restrictions in BCRA by receiving funds transferred from a national party committee and spending those funds on Federal election activity. A State, district, or local party committee must spend Federal and Levin funds it raises itself on these activities. *See* 148 Cong. Rec. H408–409 (daily ed. Feb. 13, 2002) (statement of Rep. Shays).

As discussed below, these new and revised rules partially supersede the following advisory opinions relating to preemption as to party office buildings: Advisory Opinions 2001–12, 2001–1, 1998–8, 1998–7, 1997–14, 1993–9, 1991–5, and 1986–40. Other advisory opinions may no longer be relied upon to the extent they conflict with BCRA. Further guidance will be forthcoming in future advisory opinions and rulemakings.

III. Part 100—Scope and Definition

11 CFR 100.14 Definition of ''State Committee, Subordinate Committee, District, or Local Committee''

Several provisions of BCRA refer to ''State, district, and local committees of a political party.'' *See, e.g.,* the ''Levin Amendment,'' 2 U.S.C. 441i(b)(2). In the NPRM, the Commission pointed out that the terms ''State committee,'' ''subordinate committee,'' and ''party committee,'' are already defined in the regulations, although ''district committee'' and ''local committee'' are not. 11 CFR 100.14, 100.5(e)(4); *see also* 2 U.S.C. 431(15).

In paragraph (a) of section 100.14, status as a State committee is determined by reference to the party bylaws or State law. This provision, which did not draw comment, allows the regulation to cover those States in which party committee status is a matter of State law and those in which it is a matter of party bylaws.

The proposed regulation published in the NPRM provided, in paragraphs (a), (b), and (c), with regard to ''State committees,'' ''subordinate committees,'' and ''district or local committees,'' respectively, that an organization must be ''part of the official party structure'' and be ''responsible for the day-to-day operation of the political party'' to meet the definition. Three commenters, including the principal Congressional sponsors of BCRA, objected to this conjunctive requirement. These commenters collectively believe that limiting the definition to organizations that are part of the ''official party structure'' will open the door to purportedly ''unofficial'' party organizations that would be able to avoid BCRA's requirement while ''manifestly engaged in party operations.'' Instead, they propose a disjunctive definition, which would provide that a party organization meets the respective definitions if it is part of the official party structure *or* responsible for the day-to-day operation of the party. The Commission has concluded that requiring a committee to be part of the official party structure before it satisfies the regulatory definition is an important safeguard, ensuring that BCRA's provisions sweep only as far as necessary to accomplish its ends. The Commission also believes that its definition of ''subordinate committee of a State, district, or local committee,'' which includes any organization that is directly or indirectly established, financed, maintained, or controlled by the State, district, or local committee fully addresses the sponsor's regulatory concerns in this area.

Paragraph (b) is a new provision defining ''district or local committee.'' (This provision was labeled paragraph (c) in the NPRM, while subordinate committees were covered by paragraph (b). In the final rules, the Commission has covered subordinate committees in paragraph (c). This reordering of paragraphs within section 100.14 reflects the priority given to district and local party committees in BCRA.) This definition largely parallels paragraph (a) but for political subdivisions below the State level, and encompasses those political party committees that do not necessarily operate formally under the ''control or direction'' of the State party committee. In the final rules, the Commission has deleted the phrase, ''including an entity that is directly or indirectly established, financed, maintained, or controlled by the district or local committee.''

The principal Congressional sponsors of BCRA commented that the words, ''under State law,'' as they appeared in the NPRM, are redundant given the preceding reference to ''operation of State law.'' The Commission agrees, and has deleted the redundant words in the final rule.

Three commenters objected to adding language, ''as determined by the Commission,'' in paragraph (b) of section 100.14. An association of State party officials stated, referring to paragraph (b), ''there should be no discretion left to the Commission to decide whether a particular organization is a local party committee.'' A national party committee described status as a local committee as a ''quintessential State and local'' issue. The Commission has not included the phrase, ''as determined by the Commission,'' in paragraph (b) of section 100.14.

With regard to subordinate committees, in paragraph (c) of section 100.14, the phrase, ''as determined by the Commission,'' which was included in the proposed regulation published in the NPRM, has not been included in the final rules. The Commission has concluded that this language, which refers to the availability of the advisory opinion process, is not appropriate with regard to committees other than State committees, whose status as State party committees, as determined by the Commission, makes them eligible for higher contribution limits and permits them to make coordinated expenditures under FECA. The principal Congressional sponsors of BCRA commented that, as proposed in the NPRM, this definition did not, but should, include within the definition an entity that is directly or indirectly established, financed, maintained, or controlled by the subordinate committee. The Commission has included such a provision in paragraph (c) of section 100.14 of the final rules.

11 CFR 100.24 Definition of ''Federal Election Activity''

Many of the operative provisions of Title I of BCRA use the term ''Federal election activity'' (''FEA''). *See, e.g.,* 2 U.S.C. 441i(b)(1), (2), 2 U.S.C. 441i(d). Congress defined the term at 2 U.S.C. 431(20). The Commission is adopting new regulation 11 CFR 100.24 to implement the statutory definition.

The definition of FEA proposed in the NPRM drew numerous comments urging divergent interpretations of key statutory terminology. Many of these comments focused on four important phrases that are used in the statutory definition at 2 U.S.C. 431(20). In light of these comments, the Commission has revised the regulation proposed in the NPRM by adding a new first paragraph, 11 CFR 100.24(a), which defines these four terms for the purposes of the rest of the regulation and for use in part 300 of chapter 1 of Title 11. These terms are ''voter registration activity'' (*see* 2 U.S.C. 431(20)(A)(i)), ''in connection with an election in which a candidate for Federal office appears on the ballot,'' ''get-out-the-vote activity'' (''GOTV''), and ''voter identification'' (*see* 2 U.S.C. 431(20)(A)(ii)).

A. Elections in Which Federal Candidates ''Appear on the Ballot''

The statutory definition of FEA provides that certain activities are FEA if they are ''in connection with an election in which a candidate for Federal office appears on the ballot.'' 2 U.S.C. 431(20)(A)(ii). Congress clearly intended to establish certain periods of time in which no candidates for Federal office appear on the ballot. The NPRM requested comment as to how to interpret this statutory provision. Several commenters, including the principal Congressional sponsors of BCRA, urged the Commission to construe this phrase to mean ''starting at the beginning of a two-year Federal election cycle, except in states holding regularly scheduled state elections in odd-numbered years.'' These commenters argued that this approach is ''consistent with the Commission's current practice with respect to allocation of generic voter drive and administrative expenses,'' and comports with the plain meaning of the statute.

In contrast, two commenters, a national party committee and a labor organization, urged the Commission to pick a date certain, January 1 of even-numbered years, to identify the time-frame that is ''in connection with an election in which a candidate for Federal office appears on the ballot.'' The commenters commended this approach as ''practical'' and ''reasonable.'' One of these commenters suggested that the concept of even-numbered Federal election years is already familiar, and that party activities are ''more diverse'' in odd-numbered years, in that they are more focused on local and State activities. The Commission notes that a large number of State and local elections take place in odd-numbered years (*e.g.,* mayoral elections in some large cities). Activities in connection with such elections are presumably not ''conducted in connection with an election in which a candidate for Federal office appears on the ballot,'' even under the most expansive reading of the statute.

A civil rights organization urged the Commission to interpret the term, ''in connection with an election in which a candidate for Federal office appears on the ballot,'' to mean that period of time beginning on the day on which a Federal candidate is actually certified for the ballot in a given jurisdiction. This commenter argues this interpretation is the plainest possible reading of the statute. This civil rights organization also cautioned that an overly broad definition of when a candidate ''appears on the ballot'' would unduly hamper their legitimate fundraising efforts, and thus impede many, if not all, of their non-partisan GOTV efforts. A Latino rights group and a taxpayers' organization suggested that the Commission interpret the statutory term to mean the earliest date on which a Federal candidate could qualify for the ballot in a given jurisdiction.

Paragraph (a)(1) of 11 CFR 100.24 defines ''in connection with an election in which a candidate for Federal office appears on the ballot'' to mean two specific periods of time. The first begins on the earliest filing deadline for access to the primary election ballot for Federal candidates, as determined by State law, or in those States that do not conduct primaries, on January 1 of each even-numbered year. This time period ends on the date of the general election, up to and including the date of any general runoff. This definition of ''in connection with an election in which a candidate for Federal office appears on the ballot'' closely tracks the statutory language of 2 U.S.C. 431(20)(A)(ii) by tying the definition to the actual date that Federal candidates appear on the ballot. Although this definition may result in all fifty States having different time-periods in which ''a candidate for Federal office appears on the ballot,'' for purposes of the Act, there will be only one relevant date in any particular State. Thus, this is not at all burdensome on State and local party committees, who are the primary actors affected by this clause, especially since many of these committees must already pay attention to State dates in order to file certain pre-election reports with the Commission. Finally, this definition harmonizes the rule for regularly scheduled Federal elections and special elections for Federal office held outside normal election time frames. (*See* next paragraph.)

The second time-frame that is ''in connection with an election in which a candidate for Federal office appears on the ballot'' occurs in odd-numbered years in which a special election for a Federal office occurs. Paragraph (a)(1)(ii) prescribes that the period beginning on the date the special election date is set and ending on the day of the special election is considered to be ''in connection with an election in which a candidate for Federal office appears on the ballot.''

B. Voter Registration Activity

BCRA does not define ''voter registration activity,'' as that term is used in the statutory definition of ''Federal election activity,'' although ''voter registration activity'' is ''Federal election activity'' only when it is conducted 120 days or fewer before a regularly scheduled Federal election. 2 U.S.C. 431(20)(A)(i). Paragraph (a)(2) of section 100.24, in the final rules, defines voter registration activity to encompass individualized contact for the specific purpose of assisting individuals with the process of registering to vote. The definition in paragraph (a)(2) also includes the costs of printing and distributing voter registration information, such as registration forms, and voting information, for example, pamphlets of similar materials explaining the voter-registration process.

The Commission has expressly rejected an approach whereby merely encouraging voter registration would constitute Federal election activity. The regulation requires concrete actions to assist voters, rather than mere exhortation. A more expansive definition would run the risk that thousands of political committees and grassroots organizations that merely encouraged voting as a civic duty, who have never been subject to Federal regulation for such conduct, would be swept into the extensive reporting and filing requirements mandated under Federal law.

C. Get-Out-the-Vote

Based upon the comments received in response to the rules proposed in the NPRM, the testimony at the public hearing, and its own analysis of BCRA, the Commission has concluded that it must define GOTV in a manner that distinguishes the activity from ordinary or usual campaigning that a party committee may conduct on behalf of its candidates. Stated another way, if GOTV is defined too broadly, the effect of the regulations would be to federalize a vast percentage of ordinary campaign activity.

The Commission received several comments on this topic. A State political party and an association of State party officials argued that the timing (i.e., relative to the election) should not be relevant to determining whether an activity is GOTV. Rather, both commenters suggested that GOTV ''should refer to actual communications with voters for the purpose of encouraging them to vote.'' Two public interest groups agreed that timing relative to the election is not relevant to determining whether an activity is GOTV. Neither group, however, suggests an actual definition of the term. The Congressional sponsors ''strongly disagree with the suggestion that * * * voter contacts may constitute [GOTV] only if they occur 'on Election day or shortly before.' Contacting voters to encourage voting is [GOTV] whenever it occurs.'' A labor organization suggested that timing is relevant, and urged that the Commission's definition of GOTV be limited to activities that occur on election day.

In the final rules, at 11 CFR 100.24(a)(3), the Commission adopts a definition of ''GOTV activity'' as ''contacting registered voters * * * to assist them in engaging in the act of voting.'' This definition is focused on activity that is ultimately directed to *registered* voters, even if the efforts also incidentally reach the general public. Second, GOTV has a very particular purpose: assisting registered voters to take any and all necessary steps to get to the polls and cast their ballots, or to vote by absentee ballot or other means provided by law. The Commission understands this purpose to be narrower and more specific than the broader purposes of generally increasing public support for a candidate or decreasing public support for an opposing candidate.

Paragraph (a)(3) provides a list of two examples of get-out-the-vote activity that is intended to assist in applying the regulation to particular factual situations. The first example, in paragraph (a)(3)(i), is activity whereby an individual is provided specific information on voting within 72 hours of an election, such as the date of the election, the location of polling places, and the hours the polls are open. The second example, in paragraph (a)(3)(ii), is offering to transport or actually transporting voters to the polls.

The regulation explicitly excludes ''any communication by an association or similar group of candidates for State and local office or of individuals holding State or local office if such communication refers only to one or more state or local candidates.'' Similar to the exclusion for voter identification discussed below, this exclusion keeps State and local candidates' grassroots and local political activity a question of State, not Federal law. Interpreting the statute to extend to purely State and local activity by State and local candidates would potentially bring into the Federal regulatory scheme thousands of State and local candidates that are currently outside the Federal system. The Commission declines to undertake such a vast federalization of State and local activity without greater direction from Congress.

In the NPRM, the Commission posed several questions as to how the term ''get-out-the-vote'' activity should be interpreted in the statute. Among the issues raised was whether there should be an exception for ''non-partisan'' GOTV. In their comment, the principal Congressional sponsors of BCRA strongly opposed a non-partisan exception as ''flatly inconsistent with BCRA.'' They argued that the plain language of the statute does not permit such an exception. Three other commenters, all of whom are public interest groups, make the same general argument. These commenters, and the Congressional sponsors, each opposed regulations that might contemplate ''non-partisan'' voter-drive activities by party committees and candidates, which one of the commenters labeled as ''oxymoronic.''

In contrast, one commenter, a non-profit corporation, urged the Commission to adopt a ''non-partisan exception'' for non-profit organizations that engage in non-partisan voter-drive activities such as GOTV and voter registration. This group noted that the proposed regulations would restrict fundraising on behalf of a non-profit by political party committees and Federal candidates if the non-profit spent money for FEA. It contended that, if the Commission fails to distinguish between partisan and non-partisan voter-drive activities, the efforts of legitimate, non-partisan groups to encourage voting will be hampered, perhaps fatally, in the case of some organizations. This commenter also argued that the Commission should create a ''safe harbor'' to allow political party committees and Federal candidates to raise funds on behalf of section 501(c)(3) organizations that legally engage in non-partisan voter-drive activities.

In Title I of BCRA, Congress expressly addressed party fundraising for tax-exempt organizations. Congress specifically provided that national, State, district, and local political party committees ''shall not solicit any funds for, or make or direct any donations to'' section 501(c) organizations that spend money on Federal election activity. 2 U.S.C. 441i(d)(1). The Commission does not discern, from the plain language of section 441i(d)(1), any authority to craft a regulatory exception to the definition of FEA that would modify the effect of section 441i(d)(1). This conclusion is supported by the fact that Congress did provide a limited exception for fundraising by Federal candidates on behalf of 501(c) organization that engage in FEA. *See* 2 U.S.C. 441i(e)(4)(B)

(which provides that a Federal candidate is permitted to raise up to $20,000 per calendar year from individuals for a section 501(c) organization, even if the organization engages in certain FEA.) Clearly, Congress could have crafted a non-partisan exception, but did not do so with regard to party committees' GOTV drives. Therefore, the Commission declines to adopt a ''non-partisan'' exception in 11 CFR 100.24 with regard to the definition of FEA.

In the NPRM, the Commission solicited comments as to whether there should be a *de minimis* exception allowing a certain, nominal amount of GOTV related to a Federal election that would nonetheless not render these activities as FEA. The principal Congressional sponsors of BCRA and a public interest group commented that there is no basis in the statute for a *de minimis* exception, and that such an exception ''would be contrary to the plain meaning of the statute.'' A labor organization, a national party, and a State political party committee support the inclusion of a *de minimis* exception. The State party committee suggests a $5,000 exception, so that ''informal and occasional GOTV and grassroots activities do not invoke the full force of federal regulations.'' One of the labor organizations asserts the exception would prevent the regulation from having a ''strict liability'' aspect. The Commission declines to adopt a *de minimis* exception in 11 CFR 100.24.

D. Slate Cards, Sample Ballots, and Other Exempt Activities

In the NPRM, the Commission specifically sought comment as to the use of printed slate cards, sample ballots, palm cards, and similar listings of three or more candidates in the context of GOTV. The Commission also sought comment about the larger issue of the relationship of ''exempt activities'' to ''Federal election activities.'' 67 FR 35656.

The term ''exempt activities'' refers to three types of spending by State and local party organizations, each of which is excluded from the statutory definitions of contribution and expenditure in 2 U.S.C. 431(8) and (9). That is, a payment by a State or local party organization for an exempt activity is not a ''contribution,'' within the meaning of the Act, to a candidate benefited by the activity, nor an ''expenditure,'' within the meaning of the Act, by the party organization.

Slate cards are one type of exempt activity. A payment for the ''costs of preparation, display, or mailing or other distribution . . . with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office,'' is not a contribution or expenditure. The exclusion does not apply to spending for displaying the slate card ''on broadcast stations, or in newspapers, magazines, or similar types of general public political advertising.'' 2 U.S.C. 431(8)(B)(v) (contribution); 2 U.S.C. 431(9)(B)(iv) (expenditure). *See also* 11 CFR 100.7(b)(9), 100.8(b)(10). Note that the exemption extends to the costs of a mass mailing of the slate card.

''The original intent of the slate card amendment was to allow parties to print slate cards, sample ballots, etc., to educate voters and encourage straight party voting without being subject to the disclosure provisions and contribution and expenditure limitations in Federal law.'' H.R. Rep. No. 93–1239, at 142 (1974) (House Committee on Administration Report on the Federal Election Campaign Act Amendments of 1974) (Supp. View of Rep. Frenzel). Other statements in the legislative history tend to confirm this view of the intent behind the provision. *See, e.g.,* H.R. Rep. No. 93–1438, at 65 (1974) (Conference Report on Federal Election Campaign Act Amendments of 1974) (intent of provision ''is to allow State and local parties to educate the general public as to the identity of the candidates of the party.'')

Several commenters have addressed the relationship between FEA and exempt activities, including slate cards. One State party committee commented that it understands BCRA to have ''clearly redefined all such * * * activities as Federal election activities that must be funded entirely by hard money.'' The principal Congressional sponsors of BCRA commented that slate cards, sample ballots, and palm cards should be included in GOTV. With regard to the larger issue of the relationship between all exempt activities and FEA, the principal sponsors urged that if an activity constitutes FEA, then it must be treated as such. A public interest group argues that ''federal election activity subsumes all previously allocable expenses,'' with certain exceptions not relevant here.

In a joint comment, a national party committee and two Congressional campaign committees advocated the opposite conclusion: ''Congress did not leave any suggestion in the legislative history that these important exceptions were somehow overridden * * * by BICRA.'' These commenters argued that the Commission's current treatment of exempt activities is consistent with BCRA because BCRA focuses on ''soft money'' spending for ''issue advertising,'' whereas exempt activities are, by definition, at the grassroots level. Thus, they conclude, ''exempt activities should not be deemed to be 'Federal election activity,' and that the costs of exempt activities should continue to be allocated between Federal and non-Federal funds,'' by which they mean non-Federal funds other than Levin funds. Another national party committee, a State party committee, and a labor organization made essentially the same points, agreeing that the definition of Federal election activity should exclude exempt activities.

The Commission does not interpret the Act, as amended by BCRA, to permit blanket conclusions about the relationship of exempt activities and FEA, in the sense of asserting that all exempt activities are necessarily now FEA, or *vice versa.* It is clear that not all exempt activities are FEA. For example, voter registration activities undertaken by a State or local political party on behalf of the Presidential ticket more than 120 days before a regularly scheduled election is an exempt activity under 2 U.S.C. 431(8)(B)(xii) and (9)(B)(ix), but not a Federal election activity. 11 CFR 100.24(b)(1). It is also clear that some activities satisfy one of the definitions of exempt activities and simultaneously satisfy one of the definitions of FEA. For example, voter registration activities undertaken by a State or local political party on behalf of the Presidential ticket fewer than 120 days before a regularly scheduled election satisfy both the definition of exempt activity and of Federal election activity. 2 U.S.C. 431(8)(B)(xii), (9)(B)(ix), and 20(A)(i).

In cases where a given activity undertaken by a State, district, or local political party committee is both an exempt activity and a Federal election activity, the issue is how it may or must be paid for. On this point, BCRA and the Commission's pre-BCRA regulations appear to be in conflict. Under BCRA, as interpreted in these final rules, if the activity is deemed a FEA, it must be paid for with Federal funds, Levin funds, or with an allocated mix of Federal and Levin funds. *See* 11 CFR 300.32(b). Under the Commission's pre-BCRA regulations, if the activity is deemed an exempt activity that is combined with non-Federal activity it may be paid for with an allocated mix of Federal and non-Federal funds. 11 CFR 100.7(b)(9), (15), (17), 100.8(b)(10), (16), (18), and 106.5(a)(2)(iii). *See Common Cause* v. *Federal Election Com'n,* 692 F.Supp. 1391, 1394–1396 (D.D.C. 1987). The *Common Cause* case directly addressed two of the three categories of exempt activities:

campaign materials used by volunteers (*see* 11 CFR 100.7(b)(15) and 100.8(b)(16)) and voter registration and GOTV activities on behalf of the Presidential ticket (*see* 11 CFR 100.7(b)(17) and 100.8(b)(18)), establishing that allocation of payments for these activities between Federal and non-Federal funds was properly a matter for the Commission to address in its regulations. *Common Cause,* 692 F.Supp. at 1396. While not directly addressed in *Common Cause,* the allocation of the costs of slate cards is also addressed in the Commission's regulations, but not in FECA. Compare 2 U.S.C. 431(8)(B)(v) and (9)(B)(iv) (which does not specifically provide for allocation) with 11 CFR 100.7(b)(9) and 100.8(b)(10) (which provides for allocation).

Since the Commission's regulations may not override the Act, as amended by BCRA, if an activity undertaken by a State, district, or local political party committee simultaneously constitutes both exempt activity and Federal election activity, that activity must now be paid for as a Federal election activity, not as an exempt activity.

The Commission emphasizes, however, that payments by a State, district, or local political party committee for an activity that is within one of the exempt activity categories remains excluded from the definitions of ''contribution'' and ''expenditure.'' That is, the conclusion explained in the preceding paragraph goes only to how the activity must be paid for, not to characterizing the payment as a contribution or expenditure under the Act.

With these considerations in mind, the Commission sees no valid reason to handle slate cards differently from any other type of exempt activity with regard to the definition of Federal election activity. If a State, district, or local political party committee uses slate cards as part of GOTV activity, or in a public communication that promotes or supports, or attacks or opposes a Federal candidate, then the committee must pay for the costs of these slate cards as a Federal election activity (*see* 2 U.S.C. 431(20)(A)(ii), (iii)), although these payments are excluded from the definition of ''expenditure.'' On the other hand, if a State, district, or local political party committee uses slate cards mentioning Federal and non-Federal candidates in the course of campaigning that does not constitute Federal election activity, then it may allocate the costs of these slate cards between Federal and non-Federal funds.

E. Voter Identification

In BCRA, Congress included ''voter identification'' within the definition of ''Federal election activity.'' 2 U.S.C. 431(20)(A)(ii). In the NPRM, the Commission sought comment as to whether the proposed definition was too narrowly or broadly crafted, and, in the alternative, what activities should be incorporated into the definition of ''voter identification.'' A consortium of non-profit groups expressed concern that the term ''voter identification'' could be read too broadly by encompassing ''efforts to identify the shared interests of individuals for non-electoral purposes.'' They urged the Commission to restrict the definition to ''activities designed primarily to identify the political preferences of individuals in order to influence their voting.'' Similarly, a State political party commented that the definition in the proposed regulation was ''far too broad and instead should be defined to include only activity that involved actual contact of voters, by phone, in person or otherwise, to determine their likelihood of voting generally or their likelihood of voting for a specific Federal candidate.'' This State party committee specifically urged that the final definition exclude the costs of ''acquisition or enhancement of a list of voters, or the acquisition of publicly available demographic information regarding these voters,'' arguing that such functions are properly treated as administrative expenses because they are part of the party's ''fundamental functions.'' Several national party committees offered essentially similar views. A labor organization commented that ''voter identification'' should be defined as telephone calls or canvassing ''to identify voters for other Federal election activities,'' and agreed that gathering data about voters should be excluded. Another labor organization commented that ''voter identification'' should be limited to determining voter intent with regard to specific Federal candidates only.

In contrast, the principal Congressional sponsors of BCRA commented that ''voter identification'' should include all activities designed to determine registered voters, likely voters, or voters indicating a preference for a specific candidate or party.'' They also commented that voter identification efforts should not be excluded simply because no mention is made of a Federal candidate. A public interest group commented that ''voter identification'' includes ''all efforts to identify voters, even if done in the name of state and local candidates.''

With regard to the Commission's question, posed in the NPRM, about distinguishing voter identification from GOTV, the principal Congressional sponsors commented that the distinction ''makes no difference'' because both types of activity are covered under the same provision of BCRA (*see* 2 U.S.C. 431(20)(A)(ii)). A public interest group urged the Commission not to limit voter identification to efforts to identify voters for other Federal election activities, arguing that only a ''tortured reading'' of the statute allows [GOTV] activity to modify ''voter identification.'' A labor union disagreed, arguing that only voter identification for the purposes of GOTV should be included. Another public interest group argued against distinguishing the two activities according to proximity in time to the election. (*See* previous discussion under the discussion of GOTV.)

The Commission requested comments as to whether the regulations should include a *de minimis* exception to voter identification activities. One labor union requested that there be a *de minimis* exception, particularly to allow for the maintenance and development of voter files during non-election years. Both the Congressional sponsors and a public interest group argued that such an exception would be contrary to the plain language and intent of BCRA.

In paragraph (a)(4) of section 100.24, the Commission adopts a definition of ''voter identification'' that includes the costs of ''creating or enhancing voter lists by verifying or adding information about the voters' likelihood of voting or likelihood of voting for specific candidates.'' The Commission notes that ''voter identification'' is one of the types of Federal election activity that will occur only during those times when a candidate for Federal office appears on the ballot. *See* 11 CFR 100.24(a)(1).

The Commission recognizes that even during the period when a Federal candidate appears on the ballot, the act of acquiring a voter list in and of itself does not constitute voter identification. Committees have a number of reasons for acquiring voter lists, including fundraising and off-year party building activities. Such activity, on its face, does not constitute ''voter identification'' with respect to the statute, as there lacks a nexus between the activity and the statutory language that contemplates activity ''in connection with an election in which a candidate appears on the ballot.''

The final rule excludes from the definition certain voter identification undertaken by groups or associations of State or local candidates or

officeholders, solely in reference to State or local candidates. The Commission included this exclusion because it finds it implausible that Congress intended to federalize State and local election activity to such an extent without any mention of the issue during the floor debate for BCRA. BCRA makes voter identification a subset of Federal election activity, and the regulatory implications of engaging in Federal election activity are significant. For the Commission to exercise its discretion so as to sweep within Federal regulation candidates for city council, or the local school board, who join together to identify potential voters for their own candidacies, the Commission would require more explicit instruction from Congress.

F. Definition of ''Federal Election Activity''

Paragraph (b) of section 100.24 defines Federal election activity. Paragraph (b)(1) implements 2 U.S.C. 431(20)(A)(i) by including voter registration activity during the period that begins on the date that is 120 calendar days before the date of a regularly scheduled Federal election. ''Special elections'' are not ''regularly scheduled,'' and therefore excluded from the definition. Paragraph (b)(2) of section 100.24 implements 2 U.S.C. 431(20)(A)(ii) by including with the definition of Federal election activity voter identification, GOTV, and generic campaign activity when they are conducted in connection with an election in which a Federal candidate appears on the ballot.

11 CFR 100.24(b)(3) follows new 2 U.S.C. 431(20) by providing that a public communication that refers to a clearly identified candidate for Federal office would constitute ''Federal election activity'' that must be paid for with entirely Federal funds if the communication promotes, supports, attacks, or opposes any candidate for that Federal office. This is true even if a candidate for State or local office is also mentioned or identified. ''Public communication'' is defined in proposed 11 CFR 100.26, discussed below. Public communications falling within this category of the definition of ''Federal election activity'' extend beyond communications expressly advocating a vote for or against a candidate.

11 CFR 100.24(b)(4) implements 2 U.S.C. 431(20)(A)(iv) by providing that Federal election activity includes services provided during any month by an employee of a State, district, or local committee of a political party who spends over 25% of that individual's compensated time on activities in connection with a Federal election. There were no comments on this definition. A number of issues involving employees are discussed below in the Explanation and Justification for section 300.33. The Commission has concluded that the statute is clear on its face, and therefore paragraph (b)(4) follows that statutory language without additional interpretation.

G. Activities Excluded From the Definition of ''Federal Election Activity''

In BCRA, Congress specifically excluded certain activities from the definition of Federal election activity. 2 U.S.C. 431(20)(B). Activities falling within one of the exceptions may be paid for with entirely non-Federal funds. 11 CFR 100.24(c) implements these statutory exceptions. Paragraphs (c)(1) through (c)(4) of section 100.24 parallel the statutory exclusions at 2 U.S.C. 431(20)(B)(i) through (iv).

Paragraph (c)(1) excludes a public Communication that refers solely to one or more clearly identified State or local candidates, and does not promote or support, or attack or oppose, a clearly identified candidate for Federal office, provided that the public communication is not a voter registration activity, or GOTV, or voter identification. 2 U.S.C. 431(20)(B)(i). As an example of the application of this paragraph, this exception does not apply to a telephone bank on the day before an election where there is a Federal candidate on the ballot and where GOTV phone calls are made to over 500 voters, even if the calls only refer to a State or local candidate. 2 U.S.C. 431(20)(B)(i); *see* 11 CFR 100.24(b)(2).

Paragraph (c)(2) excludes a contribution to a State or local candidate, provided that the contribution is not designated to pay for voter registration activity, voter identification, GOTV, generic campaign activity, a public communication promoting or supporting, or attacking or opposing, a clearly identified Federal candidate, or employee services as set forth in paragraphs (b)(1) through (b)(4) of section 100.24. 2 U.S.C. 431(20)(B)(ii). In the final rules, the Commission has added a reference to employee services as set forth in paragraph (b)(4) for the sake of completeness.

Paragraph (c)(3) excludes the costs of State, district, or local political conventions, meetings, or conferences. The principal Congressional sponsors of BCRA commented that this approach was too broad, in that it included ''a meeting or conference,'' whereas the statutory provision it implemented, 2 U.S.C. 431(20)(B)(iii), refers only to ''conventions.'' These commenters failed to note, however, that meetings or conferences do not fall within the statutory definition of Federal election activity, and this remains true whether the Commission explicitly states it or not. Therefore, paragraph (c)(3) excludes the costs of a State, district, or local convention, meeting or conference. 2 U.S.C. 431(20)(B)(iii). The principal Congressional sponsors otherwise supported paragraphs (c)(1) through (c)(4).

Paragraph (c)(4) excludes the costs of grassroots campaign materials that name or depict only State and local candidates. 2 U.S.C. 431(20)(B)(iv). The list of examples of such materials in paragraph (c)(4) includes certain items not mentioned in the statute. The Commission received no comments objecting to the additional items.

In the version of the regulation published in the NPRM, the Commission included two additional exceptions that it has subsequently determined should not be listed as exceptions to the definition of Federal election activity in paragraph (c). These provisions would have covered voter registration activity at any time other than the period of time that is within 120 days of a regularly scheduled Federal election, and GOTV and voter identification in elections in which no Federal candidate appears on the ballot. While these activities are not Federal election activities, under certain circumstances payments for these activities must be allocated between Federal funds and non-Federal funds. *See* 11 CFR 106.5. In this regard, these two types of activities differ from the activities described in paragraphs (c)(1) through (c)(4) of section 100.24, which always may be paid for with entirely non-Federal funds. Therefore, the Commission has removed these two provisions from the final regulation.

11 CFR 100.25 Definition of ''Generic Campaign Activity''

Section 100.25 implements the statutory definition of ''generic campaign activity,'' which has been added to the Act by BCRA. ''Generic campaign activity'' is defined in BCRA as campaign activity ''that promotes a political party and does not promote a candidate or non-Federal candidate.'' 2 U.S.C. 431(21).

Generic campaign activity is a form of Federal election activity when it takes place in connection with an election in which a candidate for Federal office appears on the ballot. 11 CFR 100.24(b)(2)(ii). The Commission is defining ''in connection with an election in which a candidate for

Federal office appears on the ballot'' to include special elections fitting that description. 11 CFR 100.24(a)(1). Therefore, generic campaign activity may, in principle, occur in connection with a special election in which a candidate for Federal office appears on the ballot, provided, of course, that the elements of the definition are otherwise satisfied. An association of State party officials commented favorably on this approach. A public interest group pointed out that Advisory Opinion 1998–9, which was issued to a State party committee, addressed a special election in which only one Federal office was at stake, and thus only one candidate of the party on the ballot. The Commission opined that under such circumstances a candidate was clearly identified, and allocable ''generic activities'' by the party under pre-BCRA 11 CFR 106.5(a)(2)(iv) were thus not possible with regard to that special election. The final regulation is consistent with the reasoning of Advisory Opinion 1998–9 in defining ''generic campaign activity.''

The final regulation elaborates on the statute by including within the definition of ''generic campaign activity'' those activities that oppose a political party without opposing a specific candidate. A labor organization commented that the regulation impermissibly goes beyond the statute by including activities in opposition to another party. In the Commission's experience, however, such activities in opposition to another party implicitly promote the party undertaking the activities, and are thus properly included in the definition. A national party committee also argued against the approach taken in the proposed regulation, characterizing it as ''confusing'' because it is framed in terms of promoting and opposing the party, which ''unnecessarily clouds the distinction of voter registration and GOTV activities.'' This commenter would have the Commission define ''generic campaign activity'' as an ''activity that promotes or opposes the particular party's ticket, without mentioning or referring to candidates by name.'' The Commission believes most of these concerns are addressed in the definitions of voter registration activity and GOTV at 11 CFR 100.24(a)(2) and (3), respectively. Also, the distinction drawn by the commenter, that is, between promoting the party and promoting the party's ticket, is limited in practical application. Whether an activity is characterized as voter registration, GOTV, or generic campaign activity, it is treated as a Federal election activity when conducted in certain relation to a Federal election, *see* 100.24(b)(1) and (2), and is, in each case, a Federal election activity on which Levin funds may be spent, *see* 11 CFR 300.32(b)(1).

In the version of the regulation proposed in the NPRM, ''generic campaign activity'' would have been defined as a ''campaign activity'' that promotes or opposes a political party but not a candidate. In the final rules, the definition instead refers to a ''public communication'' that promotes or opposes a political party but not a candidate. The Commission made this change to ensure that the definition encompasses only the external activities of a political party committee, that is, activities targeted to the public. This interpretation is also consistent with the plain meaning of the statutory provision, since it is difficult to envision how a campaign activity could effectively promote or oppose a political party without it taking the form of a public communication. This interpretation is also consistent with Advisory Opinion 1998–9, which dealt with numerous campaign activities that involved public communications.

In the final rules, the Commission has added the words ''clearly identified'' to qualify the phrase, ''Federal candidate or a non-Federal candidate.'' The intent of this addition is to remove ambiguity from the definition.

In the NPRM, the Commission sought comment on the extent, if any, to which the exclusions for exempt activities in 11 CFR 100.7(b)(9), (15), and (17) and 100.8(b)(8), (10), and (16), should apply to the definition of ''generic campaign activity.'' A public interest group commented that ''exempt activities should not be excluded from the definition of 'generic campaign activity.''' An association of State party officials commented that there appears to be no overlap between exempt activities and generic campaign activities since the former, ''by definition, reference a clearly identified Federal candidate,'' while the latter, by definition, may not.

The Commission understands two of the categories of exempt activities, slate cards (*see* 11 CFR 100.7(b)(9) and 100.8(b)(8)) and voter registration on behalf of the Presidential ticket (*see* 11 CFR 100.7(b)(17) and 100.8(b)(16)), to have no applicability to payments for generic campaign activity. This is so because these two types of exempt activities, by their nature, promote one or more candidates, and activities that promote a candidate are outside the scope of the definition of generic campaign activity. The remaining category of exempt activity—payments for certain campaign materials used by party volunteers (*see* 11 CFR 100.7(b)(15) and 100.8(b)(10))—may in certain circumstances also qualify as generic campaign activity under 11 CFR 100.25. If the campaign materials used by the volunteers promote only the party, and do not promote a candidate, then this activity would be both exempt and a generic campaign activity. A public interest group included an essentially similar analysis of this point in their comment.

11 CFR 100.26 Definition of ''Public communication''

BCRA amends 2 U.S.C. 431 by adding a new definition for the term ''public communication.'' BCRA defines ''public communication'' to include communications by broadcast, cable, satellite, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising.

The Commission did not include the Internet as a form of ''general public political advertising'' in proposed 11 CFR 100.26 because this provision of BCRA does not refer to the Internet. The Commission, however, sought comment as to whether the definition of ''public communication'' in proposed 11 CFR 100.26 should include or exclude communications provided through the use of World Wide Web sites available to the public, widely distributed electronic mail, or other uses of the Internet, such as ''Webcasts'' or the transmission of high-quality voice, graphics, or video advertisements.

Many commenters addressed this issue. A national political party, an association of State party officials, an LLC that provides technical services to campaigns, a State political party, a public interest group, and a labor union urged the Commission not to include the Internet in the definition of ''public communication.'' Four commenters pointed to the lack of inclusion of the Internet in the list of modes of public communications, noting that Congress had had an opportunity to include the Internet in this definition, but declined to do so.

A number of commenters argued that the Internet provides a low cost way for parties and other interested persons to disseminate their message widely, and the Commission should not attempt to regulate their doing so. The commenter who provides technical services to campaigns wrote, ''[the Internet] is an open, decentralized platform on which every user has the capacity to reach literally every other user. Candidates

and interest groups can and do use this medium to engage in meaningful, two-way dialogue * * *. Congress did not include other forms of two-way dialogue such as candidate forums, rallies, debates, or other events that are open to the public.''

The same commenter noted the practical impossibility in fashioning restrictions on Internet communications given the rapidly changing environment: ''Although the Internet itself has been in existence since the early 1970s, it is only recently that the medium has emerged in the mainstream * * * Internet technology continues to evolve, and so does its application.''

Other commenters were strongly opposed to the exclusion of the Internet from the media classified as public communications. The principal Congressional sponsors of BCRA and three public interest groups who support campaign finance reform argued that failure to include the Internet in this definition could carve out an exception for a widespread and growing form of political advertising. A public interest group echoed the words of the Congressional sponsors: ''A broad *per se* exclusion of that nature would be inadvisable because it could permit state and local party entities to exploit rapidly developing technology and new communications media to re-create or prolong the current soft money system.''

The Commission has considered the issue of Internet communication, both in the context of this rulemaking, as well as in previous rulemakings and the advisory opinion process. The Commission concludes that excluding the Internet from the definition of ''public communication'' is consistent with the plain meaning of the statute, consistent with Congress' decision not to include the Internet in the statutory definition of ''public communication,'' and is the best policy decision with regard to implementation of BCRA.

The Commission is convinced that the exclusion is appropriate from the perspective of statutory construction because the Internet is excluded from the list of media that constitute public communication under the statute. BCRA does not reference the ''Internet'' or ''electronic mail'' in this section, although Congress used the terms ''Internet,'' ''website,'' and ''World Wide Web address'' in other sections of BCRA. *See,* for example, 2 U.S.C. 434 note, enacted by BCRA section 201 (Federal Communications Commission to compile and maintain on its website information the FEC may need to carry out Title 2, Subtitle A, of BCRA, relating to electioneering communications); 2 U.S.C. 438a, as enacted by BCRA section 502 (Commission to maintain a website of election reports). Congress has also used the terms ''Internet'' and ''electronic mail'' in other statutes and distinguished them from ''telecommunications services.'' *See* Communications Decency Act of 1996, 47 U.S.C. § 230(f)(1) (defining ''Internet'') and 231(e)(4) (including ''electronic mail'' and excluding ''telecommunications services'' from definition of ''Internet access service''). BCRA does reference ''any other form of general public political advertising'' in the definition of ''public communication.'' General language following a listing of specific terms, however, does not evidence Congressional intent to include a separate and distinct term that is not listed, such as the Internet. *See* Sutherland Statutes and Statutory Construction, section 47; 17 *Ejusdem generis,* Vol. 2A (6th ed. 2000). It is also noted that there is no indication in the legislative history that Congress contemplated including the Internet in the definition of public communication.

Perhaps most important, there are significant policy reasons to exclude the Internet as a public communication. The Commission fails to see the threat of corruption that is present in a medium that allows almost limitless, inexpensive communication across the broadest possible cross-section of the American population. Unlike media such as television and radio, where the constraints of the medium make access financially prohibitive for the general population, the Internet is by definition a bastion of free political speech, where any individual has access to almost limitless political expression with minimal cost. As one public interest group who favors campaign finance reform argued: ''There are good policy reasons for leaving the Internet out of the definition, as it is cheap and widely available. Internet communications are not part of the campaign finance problem, and should not be regulated as such unless Congress specifically mandates it.''

11 CFR 100.27 Definition of ''Mass Mailing''

BCRA amends 2 U.S.C. 431 by adding a new definition of the term ''mass mailing'' at section 431(23). This definition, which is set out in new 11 CFR 100.27, includes any mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. For the reasons explained in the Explanation and Justification for 11 CFR 100.26, the term ''mass mailing'' excludes communications sent over the Internet. It also excludes ''electronic mail.'' *Cf.* 47 U.S.C. 231(e)(4) (''electronic mail'' is included in the definition of ''Internet access service'').

The term ''substantially similar'' is also used in the Commission's disclaimer regulations at 11 CFR 110.11(a)(3). When the disclaimer rules were adopted in 1995, the Commission explained that technological advances now permit what is basically the same communication to be personalized to include the recipient's name, occupation, geographic location, and similar variables. Communications are considered ''substantially similar'' for purposes of the disclaimer rules if they would be the same but for such individualization. *See Explanation and Justification for Regulations on Communications Disclaimer Requirements,* 60 FR 52069, 52070 (Oct. 5, 1995). The Commission proposed in the NPRM that the term ''substantially similar'' in 11 CFR 100.27 have the identical meaning.

Several commenters expressed the view that this definition of ''substantially similar'' is too narrow as applied to mass mailings. They pointed out, for example, that the sponsoring group could change an internal sentence every 490 letters and thereby escape coverage under this definition. Also, many communications are largely identical but contain a separate paragraph addressing a targeted group, such as retired teachers or those with a particular hobby. The Commission has therefore revised the final rules to state that communications are considered substantially similar for purposes of this section if they include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient's name, occupation, or geographic location.

11 CFR 100.28 Definition of ''Telephone Bank''

BCRA amends 2 U.S.C. 431 by adding a new definition of the term ''telephone bank'' at section 431(24). This definition, which is set out in new 11 CFR 100.28, includes more than 500 telephone calls of an identical or substantially similar nature within any 30-day period. A telephone bank does not include electronic mail sent over telephone lines. *See* 47 U.S.C. 231(e)(4) (distinguishing ''electronic mail'' from ''telecommunications services''). Nor does it include Internet communications transmitted over telephone lines, for the reasons discussed above in the Explanation and Justification for 11 CFR 100.26.

The Commission also proposed addressing the meaning of ''substantially similar'' in the text of the rules. *See* discussion of 11 CFR 100.27, above. As with the definition of ''mass mailing,'' discussed above, several commenters urged the Commission to broaden the definition of ''substantially similar'' contained in the proposed rules. They pointed out that, even more so than with mass mailings, phone conversations, even those where the caller is using a prepared script, are likely to vary somewhat from call to call. The Commission accordingly has revised the language of section 100.28 as proposed in the NPRM to provide that, consistent with the definition of ''mass mailing'' contained in section 100.27, communications are considered substantially similar for purposes of section 100.28 if they include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient's name, occupation, or geographic location.

IV. Part 102—Registration, Organization, and Recordkeeping by Political Committees

11 CFR 102.5 Organizations Financing Political Activity in Connection With Federal and Non-Federal Elections, Other Than Through Transfers and Joint Fundraisers: Accounts and Accounting

This section continues to set out requirements for accounts or accounting methods that must be established and maintained by organizations, including political committees, that fund activities in connection with Federal elections and non-Federal elections. The section has, however, been revised in several respects. 2 USC 441i(a) expressly prohibits national party committees from raising and spending non-Federal funds. Paragraph 102.5(c) addresses the application of this section to national party committees, while corresponding changes have been made to other portions of 11 CFR 102.5 to clarify that various provisions are now applicable to only State, district, and local party committees and organizations. While this section will continue to apply to all these party committees between November 6, 2002 and December 31, 2002, after the latter date, national party committees will no longer be covered by its provisions.

Paragraph (a)(1) remains largely unchanged except for the addition of language clarifying that State, district, and local party committees are the party organizations covered in these provisions, the addition of certain citations to other regulatory provisions, including 11 CFR part 300, and the separate discussions of administrative expenses incurred by party committees and by other political committees that are not party committees.

Paragraph (a)(2) is revised to require committees to meet at least one of the three listed conditions for depositing contributions into their Federal accounts. The purpose of this regulation is to assure that funds placed in this account are from contributors who know the intended use of their contributions, and the Commission believes that this purpose can be fulfilled by means of either contributor designations, solicitations for express purposes, or solicitations or notifications that inform contributors that their contributions are subject to the prohibitions and limitations of the Act.

New paragraph (a)(3) addresses the new category of ''Levin funds'' created by BCRA to be used by State, district, and local party committees for certain Federal election activity. These funds are subject to certain prohibitions and limitations pursuant to 11 CFR 300.31 and may be used by these party committees to pay allocable shares of particular Federal election activities under particular circumstances, including voter registration, voter identification, get-out-the-vote and generic campaign activities. *See also* 11 CFR 100.24 and 11 CFR 300.32(b) and 300.33.

The NPRM proposed requiring State, district, and local party committees to establish separate Levin accounts. Responses to the NPRM from the principal Congressional sponsors of BCRA urged retention of this requirement; however, several other responses, in particular those from party committees, requested the Commission to make such separate accounts an option rather than a requirement. One commenter stated that ''although it would seem generally prudent to establish separate 'Levin accounts,' imposing such a requirement in the regulations would be problematic,'' noting that some States prohibit party committees from establishing more than one depository account. In light of theses concerns, and because BCRA's statutory provisions do not mandate the creation of separate Levin accounts, revised paragraphs (a)(3)(i) and (ii) set out generally two alternative methods of accounting for Levin funds: a separate Levin account and the use of a reasonable accounting method approved by the Commission that will permit the committee to demonstrate that funds received and disbursed by the party committee in its existing non-Federal account meet the requirements of the Act as amended by BCRA. Paragraph (a)(3)(ii) also requires those party committees electing not to establish a separate Levin account to maintain records of funds used for Levin activities and to make these records available to the Commission upon request. Party committees intending to undertake activities pursuant to 11 CFR 300.32(b) are urged to consult 11 CFR 300.30(c) for more detailed rules regarding alternative required accounts and accounting methods.

A comment submitted in response to the NPRM expressed concern that the draft regulations could have been construed as allowing Federal candidates and officeholders to solicit funds that would be excessive or prohibited under Federal law, if the solicitation being used stated that the funds would be used for a non-Federal purpose. To address this concern, paragraph (a)(4) has been added to emphasize that the restrictions on solicitations by Federal candidates and Federal officeholders in 11 CFR 300.31(e) and 11 CFR part 300, subpart D, apply to solicitations for State, district, and local party committees.

The final rules also include a new paragraph (a)(5) that clarifies the permissibility of State, district, and local party committees and organizations creating separate allocation accounts to be used for funding Levin activities that are allocable between Federal and Levin funds pursuant to 11 CFR 300.33 and for funding other activities allocable between a committee's Federal and non-Federal funds pursuant to 11 CFR 106.7. *See also* the Explanation and Justification below for new 11 CFR 106.7 and for new 11 CFR 300.33.

11 CFR 102.5(b) addresses organizations that are not political committees. Pursuant to paragraph (b)(1), when such organizations make contributions and expenditures or payments for exempt activities under 11 CFR 100.7(b)(9), (15), and (17) and 100.8(b)(10), (16), and (18), they must maintain records of the related receipts and disbursements and must make those records available to the Commission upon request. These organizations must also be able to demonstrate through a reasonable accounting method that funds used to make contributions, expenditures, and payments for exempt activities meet the requirements of the Act.

Paragraph (b)(2) of 11 CFR 102.5 applies to those State, district, and local party organizations that are not political committees but that wish to undertake Federal election activities pursuant to

11 CFR 300.32(b). Pursuant to 11 CFR 102.5(b)(2)(i) and (ii), these party organizations are given a choice of accounting methods: establishment of a separate Levin account or use of a reasonable accounting method approved by the Commission that will permit the organization to demonstrate that permissible funds from its existing accounts were used for permissible activities. They must also make their records of funds received and expended for these activities available to the Commission upon request. Party organizations that intend to undertake activities pursuant to 11 CFR 300.32(b) are urged to consult 11 CFR 300.30(c) for more detailed rules regarding alternative required accounts and accounting methods.

11 CFR 102.17 Joint Fundraising by Committees Other Than Separate Segregated Funds

The ban on national party non-Federal fundraising affects the Commission's joint fundraising rules at 11 CFR 102.17. The Commission is, therefore, adding introductory language to this section, advising readers that ''[n]othing in this section shall supersede 11 CFR part 300, which prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities.'' Part 300 is discussed below.

V. Part 104—Reports by Political Committees

11 CFR 104.8 and 104.9 Uniform Reporting of Receipts and Disbursements

As of November 6, 2002, BCRA prohibits national committees of political parties and entities directly or indirectly established, financed, maintained, and controlled by them, including their subordinate committees, from raising and spending non-Federal funds. BCRA further requires that national party committees, including subordinate committees thereof, dispose of all non-Federal funds by December 31, 2002 in accordance with 11 CFR 300.12, and report the disposition of those funds pursuant to section 300.13. Since national party committees will no longer maintain non-Federal accounts, including office building and facility accounts, the national party non-Federal account reporting rules at 11 CFR 104.8(e) and (f), and 11 CFR 104.9(c), (d) and (e) will no longer be necessary. Therefore, the final rules covering receipts by non-Federal accounts at 11 CFR 104.8(e) and (f), and disbursements in the form of transfers to State and local party committees at 11 CFR 104.9(e), have been amended so that they apply to reports covering non-Federal account activity through December 31, 2002. In contrast, the final rules governing disbursements of non-Federal funds at 11 CFR 104.9(c) and (d) are amended to remain in effect for reports covering activity on or before March 31, 2003, rather than December 31, 2002 as provided in the NPRM. This change is prompted by the Commission's decision to permit national party committees to refund to donors by December 31, 2002 any excess non-Federal funds as provided in 11 CFR 300.12(c) and (d). Any refund checks not cashed by February 28, 2003, must be disgorged to the United States Treasury by March 31, 2003. Consequently any such disgorgements must be reported in disclosure reports covering activity through that date.

11 CFR 104.10 Reporting by Separate Segregated Funds and Nonconnected Committees of Expenses Allocated Among Candidates and Activities

Section 104.10 of the pre-BCRA regulations addressed the reporting of expenses that are allocated among more than one clearly identified candidate (paragraph (a)) and expenses that are allocated among specific types of mixed Federal/non-Federal activities by political party committees and by separate segregated funds and nonconnected committees (paragraph (b)). However, allocation with respect to certain mixed party activities has changed as a result of BCRA, notably in the introduction of the use of Levin funds. Some of the activity that was allocable under former 11 CFR 106.5 (allocation of mixed Federal/non-Federal activities by party committees) is now Federal election activity under certain circumstances. In addition, most of the categories are now allocated according to specified percentages. Moreover, the use of non-Federal funds by national party committees has been eliminated.

In view of these new circumstances, the rules for reporting of allocable expenses are being divided into three sections: 11 CFR 104.10 applies to political committees that are separate segregated funds or nonconnected committees; new 11 CFR 104.17 applies to payments allocated between the Federal and non-Federal accounts of State, district, and local party committees; and new 11 CFR 300.36 covers payments allocated by those party committees between Federal funds and Levin funds, pursuant to 11 CFR 300.32(b)(1) and 300.33.

Pre-BCRA section 104.10(a), which addressed payments entailing combined expenditures and disbursements on behalf of more than one clearly identified Federal and non-Federal candidate, is being changed very little at this point. Paragraph (a) is being amended to specify that it applies only to separate segregated funds and nonconnected committees, and to delete references to section 106.5(g) (now section 106.7(f)), which addresses non-Federal to Federal transfers made by party committees for the purpose of mixed payments.

Similar changes are being made to paragraph (b) of section 104.10. In view of the removal of party committees from this section, other adjustments are being made. In the discussion of itemization of allocated disbursements for administrative and generic voter drive expenses, the references to the Senate and House campaign committees of a political party are being deleted from paragraph (b)(1)(i) and (ii). In paragraph (b)(1)(ii), the specific reference to the types of committees using the funds expended method is being deleted because all committees addressed in this regulation would use the funds expended method for those two allocation categories. References to exempt activities are also deleted because those exemptions do not apply to the activities of separate segregated funds and nonconnected committees.

The only specific comments received on section 104.10 were general expressions of support from the principal Congressional sponsors of BCRA and two commenters on behalf of State party committees. Consequently, the final rules follow the proposed rules, except for two small reversions back to the pre-BCRA regulation. Instead of citing to 11 CFR 106.1 specifically as the regulation providing instructions on allocation for candidate support, the revised citation is to 11 CFR part 106 because 11 CFR 106.4 is applicable to the allocation of polling costs.

11 CFR 104.17 Reporting of Allocable Expenses by Party Committees

As indicated in the Explanations and Justifications for 11 CFR 104.10 and 106.1, pre-BCRA section 104.10 has been divided into two sections for the reporting of allocable payments. Section 104.10 now addresses reporting of allocable expenses by separate segregated funds and non-connected committees. Section 104.17, which had been a reserved section prior to the enactment of BCRA, now addresses reporting of allocable expenses by party committees.

Paragraph (a) of new section 104.17 addresses allocation of the support of candidates, including Federal and non-Federal candidates, by national party committees and by State, district, and local party committees. As indicated below, national party committees must use all Federal funds, while State, district, and local party committees may use a mixture of Federal and non-Federal funds under certain circumstances. Paragraph (b) of this section addresses the reporting of the allocation of expenditures and disbursements for mixed Federal/non-Federal activities that are not Federal election activities undertaken by State, district, and local party committees. These include, for example, administrative costs and the costs of exempt activities that do not fall within the definition of Federal election activity. Reporting requirements with regard to specific Federal election activities allocable between Federal and Levin funds pursuant to 11 CFR 300.33 are addressed separately in 11 CFR 300.36.

The NPRM included proposed 11 CFR 104.17(a) to address payments on behalf of more than one clearly identified candidate, including payments that entail an expenditure on behalf of one or more Federal candidates and a disbursement on behalf of one or more non-Federal candidates. The NPRM explained that all such payments must be made with Federal funds and must be reported.

Proposed paragraphs (a)(1) and (a)(2) provided for the use of a unique identifying title or code for each program or activity conducted on behalf of more than one candidate and for the retention of records in accordance with 11 CFR 104.14. These requirements were in pre-BCRA 11 CFR 104.10.

The Commission sought comments on the proposed requirement that a State, district, or local party use only Federal funds for the combined payments on behalf of clearly identified Federal and clearly identified non-Federal candidates. As indicated in the Explanation and Justification of 11 CFR 106.1, a number of commenters noted that materials and communications that refer to both Federal and non-Federal candidates, but are not public communications and do not otherwise meet the definition of Federal election activity, should continue to be subject to allocation based on the time or space devoted to each candidate. Other commenters asserted that only Federal funds could be used.

The final rule in 11 CFR 104.17 clarifies the issue as to the use of Federal funds. Paragraph (a) makes clear that, where a national party committee makes a payment that consists of both an expenditure on behalf of a Federal candidate and a disbursement on behalf of a non-Federal candidate, the amounts attributed to each candidate must be disclosed, but only a Federal account may be used.

Paragraph (a) changes the approach taken in the NPRM with respect to State, district, and local party committees, which, unlike national party committees, may have non-Federal accounts under BCRA. The application of the new Federal election activity provisions of BCRA means that many disbursements by State, district, and local party committees mentioning Federal candidates that in the past were allocable between Federal and non-Federal accounts pre-BCRA must now be paid solely with Federal funds. There will still be, however, other payments entailing expenditures by State, district, and local party committees on behalf of Federal candidates and disbursements by these committees on behalf of non-Federal candidates that will not be Federal election activities; these will continue to be allocable between Federal and non-Federal accounts.

Accordingly, paragraph (a)(1) in the final rule generally follows pre-BCRA 11 CFR 104.10(a)(1), including the retention of the requirement of unique identifying titles or codes. All report entries that reflect the same allocable program or activity will share the same title or code to better track the particular program or activity. The use of unique identifiers for other various categories of mixed party activities is discussed below.

Paragraphs (a)(2) and (a)(3) of 11 CFR 104.17 follow pre-BCRA 11 CFR 104.10 with a minor citation change. Paragraph (a)(2) includes reporting of transfers to allocation accounts, which did not appear in either paragraph (a) or (b) of proposed 11 CFR 104.17. Proposed paragraph (a)(2), addressing recordkeeping, is re-numbered as (a)(4) in the final rules.

Section 104.17(b) in the NPRM addressed the reporting of all allocations of disbursements for activities of State, district, and local party committees, including disbursements for allocable Federal election activities, i.e., certain activities eligible to be paid in part with Levin funds pursuant to 11 CFR 300.33. For purposes of clarity, the final rule covers only the reporting of disbursements for allocable party activities that are not Federal election activities. The reporting of allocable Federal election activities is subject to the rules in 11 CFR 300.36.

Section 104.17(b) establishes that State, district, and local party committees that have set up Federal and non-Federal accounts, including any allocation accounts being used to make disbursements for allocable activities, must report all payments that are allocated pursuant to 11 CFR 106.7.

Paragraph (b)(1)(i) requires statements by State, district, and local party committees in their initial reports at the beginning of a calendar year of the percentages the committee will use for payments to be allocated between Federal and non-Federal accounts for specific categories of party activity. Paragraph (b)(1)(ii) requires a statement of the category for each allocable disbursement and the total amounts spent that year for each category. These requirements are similar to those contained in the pre-BCRA regulations.

With regard to a requirement of unique identifiers in the reports of allocable activities, the NPRM asked for comments as to whether such identifying codes would be useful. The principal Congressional sponsors of BCRA in their comments left this decision to the Commission, although they stated that identifying codes would be of ''significant utility in greater specificity in reporting.'' Two of the comments from party committees argued against such a requirement, arguing that the purpose of the codes in the past had been to distinguish among activities that had differing allocation ratios and that use of the same allocation ratio made the codes unnecessary.

The final rule at paragraph (b)(1)(iii) of 11 CFR 104.17 requires party committees to assign unique identifiers to certain allocable activities, excluding allocable administrative costs. This requirement follows requirements in the pre-BCRA regulations at 11 CFR 104.10(b)(2) with regard to the reporting of the direct costs of fundraising and the costs of exempt activities. Paragraph (b)(1)(iii) also specifies that unique identifying titles or codes are not required for salaries and wages under 11 CFR 106.7(c)(1) because salaries and wages are not allocable.

The Commission recognizes that, as noted by certain party committees in their comments, the rules will now require use of the same set of percentages in a given year for almost all allocable party activity categories, thereby weakening one of the previous rationales for using unique identifiers for some categories of activities. Such identifying mechanisms are, however, still needed to enable reviewers of a party committee's reports, including members of the public, to track

accurately the specific transactions involved in a particular allocable activity. It is significant that party committees frequently make many disbursements to the same vendor for differing purposes and that a number of vendors may be paid for similar activities. Thus, the Commission is requiring that certain allocable activities or programs carry a unique identifying title or code. The Commission has also concluded that, while unique identifiers for administrative costs would be of some utility, it will continue the practice of not requiring them in order to avoid imposing an additional administrative burden on party committees. All entries of disbursements to pay for an allocated program or activity must include a reference to the unique identifier, if an identifier is required for that allocation category. In addition, each reporting entry of a transfer (from the non-Federal account to the Federal or allocation account) for a program or activity must include a reference to the unique identifier, if an identifier is required for that allocation category.

Paragraph (b)(2) of 11 CFR 104.17 addresses the reporting of transfers from the non-Federal to the Federal account, or from both accounts into the allocation account, of funds to be used for allocable expenses. As did the pre-BCRA rules, this paragraph requires memo entries on reports as to the allocable expenses for which the transfer is being made and the date of the transfer. If more than one activity is covered by a transfer, the report must itemize the amounts designated for each category of expense. The Commission received no comments on this provision.

Section 104.17(b)(3)(i) sets out the details required in the reporting of disbursements for allocable activity by State, district, and local committees of political parties.

Section 104.17(b)(3)(ii) addresses the reporting of State, district, and local party disbursements for activity that is allocable between a committee's Federal and Levin funds by referring the reader to the requirements of 11 CFR 300.36.

Section 104.17(b)(4) requires the retention of all documents supporting allocations of expenditures and disbursements for three years, consistent with FECA.

VI. Part 106—Allocations of Candidate and Committee Activities

11 CFR 106.1 Allocation of Expenses Between Candidates

Pre-BCRA 11 CFR 106.1 addressed the allocation of expenditures and/or disbursements among more than one candidate. Paragraph (a)(1) set out the general rule for allocation of an expenditure made on behalf of more than one clearly identified Federal candidate. It also addressed allocation of a payment involving both an expenditure made on behalf of one or more clearly identified Federal candidates and a disbursement on behalf of one or more non-Federal candidates. The proposed regulation in the NPRM added language indicating that a party committee must use only Federal funds for both kinds of situations, not just the first one. This was based on proposed 11 CFR 300.33(c)(1), which stated that only Federal funds could be used for activities that referred to a Federal candidate. It was also based on BCRA and proposed 11 CFR 100.24(a)(3), which provided that only Federal funds may be used for a public communication that refers to a clearly identified Federal candidate and that promotes, attacks, supports, or opposes the candidate (regardless of whether a non-Federal candidate is also mentioned).

The NPRM divided pre-BCRA section 104.10, which addressed reporting of allocation by nonconnected committees and separate segregated funds, as well as by party committees, into two sections: 11 CFR 104.10 for nonconnected committees and separate segregated funds, and 11 CFR 104.17 for party committees. In view of this rearrangement, the proposed rules in paragraph (a)(2) of section 106.1 added a reference to 11 CFR 104.17(a) to cover party committee reporting. In addition, the pre-BCRA rules addressing allocation among Federal and non-Federal candidates was modified in the NPRM to delete the citation to party committee transfer procedures. This was premised on the position that such payments had to be made entirely with Federal funds.

The NPRM proposed no changes to pre-BCRA paragraphs (b), (c), and (d) of 11 CFR 106.1. Paragraph (e) is a signpost to the sections that address allocation of specific types of mixed Federal/non-Federal activity, other than expenditures and/or disbursements on behalf of clearly identified candidates. The NPRM proposed to delete from this paragraph a reference to 11 CFR 106.5, to add a reference to 11 CFR 300.33, and to amend the list of allocation categories to conform to other proposed regulations, including a deletion of exempt activities.

The NPRM narrative asked whether the proposed requirement that a State, district, or local party committee use only Federal funds for all payments made on behalf of both clearly identified Federal and clearly identified non-Federal candidates is appropriate under BCRA. The NPRM also asked for comments on, and discussed whether exempt party activities [3] for both Federal and non-Federal candidates (i.e., entailing disbursements for Federal candidates that were exempt from the definition of contribution or expenditure) still exist as an allocable category after passage of BCRA.

Three commenters on behalf of party committees stated that not every activity that mentions a clearly identified Federal candidate must be paid for exclusively with Federal funds. They argued that materials and communications that refer to both Federal and non-Federal candidates but are not public communications and do not otherwise meet the definition of Federal election activity should continue to be subject to allocation based on time or space devoted to the Federal and non-Federal candidates as under the pre-BCRA regulations. One of these commenters also argued that the costs of ''non-communicative activities'' that result in an in-kind contribution and donation to Federal and non-Federal candidates respectively should continue to be allocable between Federal and non-Federal accounts.

The principal Congressional sponsors of BCRA stated that BCRA required the proposed result for such payments by State, district, and local party committees. Another commenter referred to several specific provisions in BCRA to support the view that only Federal funds can be used for the payment on behalf of both a Federal and non-Federal candidate: (1) 2 U.S.C. 441i(b)(1), which provides that costs for Federal election activity shall be paid for with Federal funds; and (2) 2 U.S.C. 441i(b)(2)(A) and (B), which allow for allocation of some Federal election activities but not when the activity refers to a clearly identified Federal candidate. A third commenter agreed that national party committees must use only Federal funds for payments involving both expenditures on behalf of a Federal candidate and disbursements on behalf of a non-Federal candidate but did not comment on State, district, or local party committees.

The comments on the relationship of Federal election activities to exempt activities are summarized in the

[3] For discussion of exempt activities, *see* Explanation and Justification for 11 CFR 100.24, above; *see also* 2 U.S.C. 431(8)(B)(v), (ix), and (xi), and 431(9)(B)(iv),(viii), and (ix).

Explanation and Justification of 11 CFR 100.24, above. Some commenters concluded that exempt activities should not be included within Federal election activity at all or that many exempt activities are not redefined as Federal election activity. Thus, they concluded that there are a number of exempt activities that are not Federal election activity. Others believe that exempt activities are nearly or completely subsumed by, or redefined as, Federal election activity. Within both groups, there was a variety of opinion as to the precise relationship.

The final rule at 11 CFR 106.1 has been changed from the proposed regulation with respect to the use by a party committee of both Federal and non-Federal funds for a payment that is an expenditure on behalf of a clearly identified Federal candidate and a disbursement on behalf of a clearly identified non-Federal candidate. Any such payment that is for a Federal election activity requires the use of Federal funds only, as set out in 11 CFR 106.1(a)(2). The final rule, in paragraph (a)(2), also includes references to other sections to the effect that payments for Federal election activities that are also attributable to clearly identified candidates are subject to new 11 CFR 300.33 and that the allocation among the particular candidates must be reported, in accordance with 11 CFR 104.17(a).

However, a payment that is not for Federal election activities but that is an expenditure on behalf of a clearly identified Federal candidate and also a disbursement on behalf of a clearly identified non-Federal candidate is either allocable between Federal and non-Federal accounts or payable with Federal funds only. Hence, the last sentence of proposed paragraph (a)(1), indicating that only Federal funds can be used, is deleted from the final rules. In addition, the final rule does not include language from proposed paragraph (a)(2) to the effect that only separate segregated funds and nonconnected committees may make a payment that includes an expenditure of Federal funds on behalf of a Federal candidate and a disbursement on behalf of a non-Federal candidate. Moreover, the reference to party committee transfer procedures for allocable expenses is added back into paragraph (a)(2).

Paragraph (a)(1) of the final rule includes also the appropriate method for attributing expenditures and disbursements among candidates in the case of a phone bank. This method is derived from pre-BCRA 11 CFR 106.5(e) (re-numbered 11 CFR 106.7), which addressed Federal/non-Federal allocation in the analogous situation of exempt activities. This method, which has provided guidance for allocation of expenditures and disbursements for direct candidate support, is no longer in the new regulations after December 31, 2002 for other mixed party activities. Therefore, the regulations at 11 CFR 106.1 directly address phone banks.

Federal election activity includes some of the activities that also meet the definition of exempt activities. As indicated in the Explanation and Justification of 11 CFR 100.24, a Federal election activity that, pre-BCRA, would have been allocable as an exempt activity, is now a Federal election activity covered by the allocation rules at 11 CFR 300.33. Under 11 CFR 106.7, however, exempt activities still exist as an allocable category of expenses in a number of situations. Hence, a complete list of particular allocable costs other than those addressed in 11 CFR 106.1 should include exempt activities. The final rule at 11 CFR 106.1(e) does not list individual allocation categories but still serves as a signpost to sections addressing the allocation of mixed Federal/non-Federal or mixed Federal/Levin payments.

Exempt party activities also relate to section 106.1 as follows. If an activity supporting clearly identified Federal and non-Federal candidates is a Federal election activity and is not also an exempt activity, the portion of the payment attributable to each Federal candidate is an expenditure for that candidate, and may constitute an in-kind contribution, an independent expenditure, or a coordinated expenditure. If the payment is for a Federal election activity that is also an exempt activity, the amounts are exempted from the definition of ''expenditure'' or ''contribution.'' Although the expense must be paid for entirely with Federal funds, only the amounts that are attributable to the Federal candidates or Federal elections (but using the new percentages in 11 CFR 106.7) count toward the political committee registration threshold at 2 U.S.C. 431(4)(C) for local party committees, which is more than $5,000 in exempt activity payments. See 11 CFR 100.5(c) and the Explanation and Justification for 11 CFR 100.24(a) and 11 CFR 300.36(a).

11 CFR 106.5 Allocation of Expenses Between Federal and Non-Federal Activities by National Party Committees

The NPRM proposed amending 11 CFR 106.5 to explain the allocation rules for State, district, and local party committees. Proposed paragraph (a) also stated that because national party committees would no longer be able to raise and spend non-Federal funds, they would no longer be able to allocate their expenses between their Federal and non-Federal accounts. *See* 67 FR 35679. While this is true after December 31, 2002, national party committees will be able to spend non-Federal funds for limited purposes during the transition period of November 6, 2002, through December 31, 2002. For discussion of the transition period, *see* the Explanation and Justification for 11 CFR 300.12, below. The Commission realizes that the regulations need to contain allocation rules for national party committees during this transition period. Therefore, the final rules include several technical amendments to section 106.5 to make it applicable solely to national party committees and only during the transition period. The current allocation rules remain unchanged for national party committees. The final rules that apply to State, district, and local party committees, set out in proposed 11 CFR 106.5, are being designated as new 11 CFR 106.7 in the final rules. *See* below.

Consistent with this reorganization, the word ''national'' is placed before ''party committees'' in several places in 11 CFR 106.5, including the title of the section, to clarify that this section only applies to national party committees. A title is added to paragraph (a)(1) for consistency because all other paragraphs under paragraph (a) have titles. Paragraphs (a)(2)(iii), (d), and (e) are removed and reserved because they apply to State, district, and local party committees. Paragraph (h) is added to be a sunset provision. Paragraph (h) states that section 106.5 only applies during the transition period and will no longer be effective after December 31, 2002.

11 CFR 106.7 Allocation of Expenses Between Federal and Non-Federal Accounts by Party Committees, Other Than for Federal Election Activities

Section 106.7 sets forth rules governing the allocation of certain expenses between the Federal and non-Federal accounts of political parties. Much of new section 106.7 covers topics formerly addressed in pre-BCRA 11 CFR 106.5. The final rules addressing allocation of expenditures and disbursements at 11 CFR 106.7 and 11 CFR 300.33 separate between the two sections respectively those activities that are not ''Federal election activity'' and those that are. This reorganization is based in large part upon the need to clarify in the rules the relationship between ''exempt activities'' and ''Federal election activities,'' particularly given certain timing

parameters involved in the sub-set of Federal election activities that may be paid in part with Levin funds. *See* 11 CFR 300.32 and 300.33. Therefore, 11 CFR 106.7 addresses allocation of expenses for all State, district, and local party activity that falls outside the definition of Federal election activity, which are allocable between Federal and non-Federal accounts. In contrast, 11 CFR 300.33 addresses the allocation of those types of Federal election activity that may be allocated between Federal and Levin accounts.

A. Allocable Activities That Are Not FEA

The content of 11 CFR 106.7(a) and (b) remains much the same as the NPRM, when it was designated 11 CFR 106.5(a) and (b), although new language has been added to emphasize that these provisions address activities other than Federal election activities. These paragraphs state the general principles that after December 31, 2002: (1) National party committees are no longer permitted to raise and spend non-Federal funds,[4] and thus are unable to allocate expenses between Federal and non-Federal accounts; and (2) State, district, and local party committees that make expenditures and disbursements for activities other than Federal election activities in connection with both Federal and non-Federal elections must either use only Federal funds for these purposes or must establish separate Federal and non-Federal accounts and allocate expenditures between or among those accounts.

The prohibitions on national party committee use of non-Federal funds has resulted in the complete elimination of pre-BCRA 11 CFR 106.5(b) and (c). Thus, the provisions in new 11 CFR 106.7(b) through (f) only apply to State, district, and local party committees, and do not apply to national party committees.

B. Salaries and Wages

Paragraph 106.7(c) addresses costs that must be either paid totally from Federal accounts or allocated by State, district, and local party committees between their Federal and non-Federal accounts. Under paragraph (c)(1), however, State, district, and local party committees must pay entirely with funds that comply with State law the salaries and wages of employees who spend 25% or less of their compensated time on Federal election activity or an activity in connection with Federal elections. The inclusion of ''wages'' is intended to include hourly employees. The compensation of other employees who spend more time on Federal election activity or activity in connection with Federal elections is addressed in paragraph (d)(1)(ii) and new 11 CFR 300.33. BCRA defines ''Federal election activity'' to include the cost of all services provided by an employee in any month in which the individual spends more than 25% of his or her compensated time on activities in connection with a Federal election. 2 U.S.C. 431(20)(A)(iv). This federalizes a high proportion of salary payments that were previously paid for with an allocation of Federal and non-Federal dollars. By requiring the salaries and wages related to many activities that are primarily, or even entirely, State or local in their orientation to be paid for with Federal funds, when the amount of time spent on them exceeds 25%, Congress clearly expressed its desire to federalize these costs. By implication, Congress appears to have concluded that salaries for employees spending 25% or less of their time on activities in connection with a Federal election or on Federal election activities do not have to be paid from any mix of Federal funds. Thus, this new regulation in 11 CFR 106.7(c) is in accord with Congressional intent, and it comports with Congress's expectation that the Commission would develop allocation regulations for Federal election activity paid for in part with Levin funds.

The proposed regulations at 11 CFR 300.33(b)(1) would have required State, district, and local party committees to keep time records for all employees, the purpose being to provide documentation for allocation purposes. The NPRM set out three possible alternative methods by which a committee could collect such documentation. In response to the NPRM, a State party committee asserted that time sheets would be ''burdensome,'' that written certifications by employees would be ''equally impractical,'' but that a tally sheet kept by the employer would be ''more reasonable.'' The same commenter nonetheless urged the Commission not to require any particular method of documentation. For the reasons noted by the commenters, the final rule at 11 CFR 106.7(d)(1) requires only that a monthly log be kept of the percentage of time each employee spends in connection with a Federal election.

C. Administrative Costs

One category of allocable expenses in 11 CFR 106.7 is ''administrative costs.'' Under paragraph (c)(2), these costs cover administrative expenses except for employee salaries and wages. The final rule requires allocation of these costs between a party committee's Federal and non-Federal accounts, unless they can be attributed to a clearly identified Federal candidate, in which case they are totally Federal costs to be paid with Federal funds.

A number of the comments received in response to the NPRM argued that, because BCRA does not address administrative costs, State, district, and local party committees should be able to pay them totally out of their non-Federal accounts. One commenter representing a State party emphasized the many State and local elections and ballot initiatives with which his party is involved as compared to the number of Federal elections. Other commenters, however, including the principal Congressional sponsors of BCRA, argued that BCRA was never intended to change the allocations required by the pre-BCRA regulations, and that administrative costs should continue to be allocable between Federal and non-Federal accounts.

While the Commission recognizes that non-Federal activity consumes a large portion of State party time and finances, there is no doubt that Federal candidates benefit from such party committees' efforts to reach and motivate potential voters. The Commission also agrees that nothing in BCRA or the legislative history suggests that Congress intended the Commission to abandon its longstanding allocation requirement for these expenses. Therefore, the final rules continue to require allocation of administrative costs under a simplified allocation method discussed below.

D. Exempt Activities

Under the Act, as amended by BCRA, how the costs of voter registration, voter identification, get-out-the-vote (''GOTV'') and other campaign activities that may promote or oppose a political party without promoting or opposing a candidate are allocated depends on whether such activities come within the definition of ''Federal election activity'' or not. *See* 11 CFR 100.24(a), (b). Numerous commenters focused upon the relationship between the provisions in FECA and in the Commission's regulations that exempt certain party activities from the definitions of ''contribution'' and ''expenditure'' and the provisions in BCRA establishing ''Federal election activities'' as a general category, and activities for which Levin funds may be used. The comments and the Commission's determinations in this regard are discussed in the Explanation

[4] The actual ban on this activity takes effect on November 6, 2002.

and Justification for 11 CFR 100.24 defining ''Federal election activity.''

The final rules in 11 CFR 106.7(c)(3) set out the permitted allocations of costs for categories of party expenditures and disbursements for activities that are exempt party activities but are not Federal election activities. The party committee must either pay the costs of this activity from its Federal account or allocate the costs between its Federal and non-Federal accounts.

E. Fundraising Costs

11 CFR 106.7(c)(4) addresses the direct costs of a fundraising program or event when the State, district, or local party committee is raising both Federal and non-Federal funds for itself. The NPRM indicated that all *direct* fundraising costs must be paid from a Federal account, while other fundraising-related costs not directly related to particular fundraising programs or events could be allocated between Federal and non-Federal accounts as administrative costs.

There was no consensus among the public comments addressing this topic. The principal Congressional sponsors of BCRA supported the proposed rules that would have required entirely Federal funds to be used for these purposes. A public interest group and a party committee urged the Commission to continue to use the previous funds received method for allocating these fundraising costs. Two party committees urged allocation of only those fundraising costs that are directly associated with a particular fundraising program or event.

The Commission observes that BCRA requires the use by State, district, and local party committees of funds ''subject to the limitations, prohibitions, and reporting requirements of this Act.'' 2 U.S.C. 441i(c). Thus, the Commission has concluded that not only Federal funds, but Levin funds as well, may be used to raise funds that are used, in whole or in part, for Federal election activities. *See* 11 CFR 300.33(c)(3). Non-Federal funds may not be used. The reasons for this conclusion are set out in greater details in the Explanation and Justification for 11 CFR 300.32 below.

With regard to fundraising purposes other than Federal election activity, the final rule at 11 CFR 106.7(c)(4) permits the direct costs of fundraising to be allocated between Federal and non-Federal funds, provided that none of the proceeds so raised will ever be used for Federal election activities. In addition, the rule requires the segregation of the proceeds in bank accounts that are never used for Federal election activity. Paragraph (c)(4) specifies that direct costs of fundraising include the solicitation costs and the costs of planning and administering a particular fundraising event or program.

F. Certain Voter Drive Activities

11 CFR 106.7(c)(5), which did not appear in the version of the regulation published in the NPRM, addresses expenses, other than salaries and wages, for voter-drive activities and other party committee activities that are not candidate-specific and that do not qualify as Federal election activities. These may include, for example, certain voter identification, GOTV, or other activities that do not promote or oppose a Federal candidate or non-Federal candidate, and that do not qualify as Federal election activities because they are not in connection with an election in which a Federal candidate appears on the ballot. *See* 11 CFR 100.24(a)(1) and (b)(2). Paragraph (c)(5) provides that the costs of such activities may be allocated between the Federal and non-Federal accounts of the State, district, or local party committee.

G. Allocation Percentages and Recordkeeping

One goal of the final rule is to assure that activities deemed allocable are not paid for with a disproportionate amount of non-Federal funds. Another goal is to simplify the allocation process, in particular by establishing formulas that do not vary from State to State. Therefore, in lieu of the State-by-State ballot composition ratios for administrative costs and generic campaign activity and in lieu of the time or space method applied to exempt State activities, which were required by the pre-BCRA regulations, the rules at 11 CFR 106.7(d)(2) and (3) establish fixed percentages for all States for certain activities. The percentages vary only in terms of whether or not a Presidential campaign and/or a Senate campaign is to be held in a particular election year.

In the NPRM, the Commission set out proposed required allocation percentages for the Federal shares of salaries and other compensation paid employees who spend 25% or less of their time on Federal elections, for administrative expenses, and for exempt party activities that are not Federal election activities. For the reasons explained above, the Commission has decided that no salaries and wages are to be allocated. With regard to administrative costs and exempt activities, State, district, and local party committees must allocate no less than the following amounts to their Federal accounts during the following years (and in the preceding year):

(i) Presidential only election year—28% of costs

(ii) Presidential and Senate election year—36% of costs

(iii) Senate only election year—21% of costs

(iv) Non-Presidential and Non-Senate election year—15% of costs.

These figures were derived by taking averages of the ballot composition-based allocation percentages reported by State party committees in four groupings of States selected for their diversities of size and geographic location and for the particular elections held in each State in 2000 and 2002. The groupings were: (1) Six States (Alabama, Colorado, Illinois, New Hampshire, Oklahoma, and Oregon) in which there was a Presidential but no Senate campaign in 2000; (2) 10 States (California, Delaware, Georgia, Florida, Michigan, New York, North Dakota, Texas, Vermont, and Wyoming) in which there were both a Presidential campaign and a Senate campaign in 2000; (3) six States (Delaware, Georgia, Michigan, Oklahoma, Texas, and Wyoming) in which there will be a Senate campaign in 2002; and (4) six States (California, Florida, New York, North Dakota, Vermont, and Washington) in which there will be no Senate campaign in 2002.

In 2000, the Federal percentages for the two parties in six States with only a Presidential campaign ranged from 20% to 33.33%, with an average of 28%, while the Federal percentages for the two parties in ten States which held both Presidential and Senate campaign that year ranged from 30% to 43%, with an average of 36%. In 2002, the Federal percentages for the two parties in six States with a Senate campaign ranged from 20% to 25%, with an average of 21%, while the Federal percentages for the two parties in six States with no Senate campaign ranged from 11.11% to 16.67%, with an average of 15%. The rules apply the average percentages in each of the four groupings of States to all 50 States.

One comment on the proposed rules from a public interest organization addressed the Commission's proposed fixed percentages by providing two alternatives to the Commission's figures. The first alternative would have set a flat 33% requirement for Federal shares of what the commenter termed ''Levin expenditures'' (*see* 11 CFR 300.33) and for allocable costs other than administrative costs in odd-numbered years or in non-Presidential election years, and a flat 40% requirement for Federal shares of these same categories

of activities in Presidential election years. This alternative would also have required a 25% allocation for administrative costs in all years. The commenter based these percentages on what were termed ''the current assumption'' as to what State party committees spend in certain years.

The second alternative urged by this commenter adopted the Commission's calculations, but called for the use of the higher percentages in the sample States for what the response termed ''Levin spending'' and for voter registration outside the 120 day period before an election, plus the average percentages for non-Levin expenses such as administrative costs. The commenter also urged the Commission to be clear that its allocation percentages apply to a two-year election cycle, not just to the year of a Federal election.

The comment submitted on behalf of the principal Congressional sponsors of BCRA with regard to fixed allocation percentages was very similar to that of the public interest organization's response cited above in that, as one alternative approach, it called for at least a 33% Federal allocation of what it termed ''Levin activities'' and of voter registration activities outside the 120 period before an election, plus 25% Federal allocations for administrative expenses. It also called for 40% Federal allocations of Levin activities and of voter registration activities that are not Federal election activities in Presidential election years. This alternative assumed the application of the percentages to two-year Federal election cycles. As a second alternative, this commenter also agreed to use of the Commission's percentages for administrative costs in a two year cycle, but urged the application over that cycle of the highest, not the average, Federal percentages for what it termed ''Levin activities and voter registration activities that are not 'Federal election activity' * * * .'' Another comment from a public interest organization also called for use of the highest percentages in the identified States, not the average percentages.

The comments received from party committees with regard to fixed percentages for Federal allocations ranged from support for the Commission's position to giving party committees a choice at the beginning of each cycle between the proposed formula and ballot composition ratios.

The final rules at 11 CFR 106.7(d) include the phrase, ''and in the preceding year,'' to clarify that the allocation formula in this section apply to both years of a Federal election cycle.

With regard to the amounts of the fixed minimum Federal allocations, the final rules adopt the percentages contained in the NPRM because they represent averages of actual allocation ratios used in specific States at specific times, not assumptions as to possible State, district, and local party behavior in the future. These percentages represent a clear, bright line test intended to be more easily understood and applied than the previous regulations, consistent with statutory intent. As noted above, the percentages apply throughout a two-year cycle—i.e., from January 1st of odd-numbered years through December 31st of even-numbered years.

H. Allocable Fundraising Costs

The NPRM sought comment as to whether costs of fundraising, other than fundraising for Federal election activities, should be allocated under the ''funds received'' method in previous 11 CFR 106.5(f). Two commenters, a political party organization and a public interest organization, supported the idea of using the ''funds received'' method for fundraising where the funds raised are not used for Federal election activity.

The Commission has decided to continue the use of the ''funds received'' method for allocating direct costs of fundraising. This is set out in a new 11 CFR 106.7(d)(4). Under this method, the State, district, or local party committee must allocate based on the ratio of funds received into the Federal account to the total receipts for the fundraising program or event. The ratio must be estimated prior to each such program or event based upon a reasonable prediction and, as provided in the rule, subsequent adjustments must be made, if necessary. New 11 CFR 106.7(e)(4) clarifies that fundraising costs for Federal election activities are governed by new 11 CFR 300.32.

I. Non-Allocable Costs

Section 106.7(e) sets out those activities that are not allocable between Federal and non-Federal accounts. Paragraph (e)(1) requires that a payment for any activity that refers only to one or more candidates for Federal office must not be allocated between Federal and non-Federal accounts. These costs must be paid for entirely with funds from a Federal account. Paragraphs (e)(2) and (3) indicate that employee salaries and wages under certain conditions must not be allocated between Federal and non-Federal accounts, but must be paid for entirely with non-Federal funds.

J. Transfers

Section 106.7(f), which addresses transfers to pay for allocable activities, is similar to the proposed rule, with the addition of language providing for allocation accounts as an alternative to the use of Federal accounts for initial payments of allocable expenditures and disbursements. This provision tracks for the most part the language and requirements of pre-BCRA 11 CFR 106.5(g). No comments addressed the continuation of this requirement. Reimbursements from a non-Federal account to a Federal account must take place within a specified number of days. The continuation of these timing provisions will ensure that party committees need not change this aspect of their operations.

Section 106.7(f)(2)(ii), like former 11 CFR 106.5(g)(2)(B)(iii), explains that any payment outside this time frame, absent the need for an advance payment of a reasonably estimated amount, could result, depending on the circumstances, in a loan of non-Federal funds to the Federal account and a violation of the Act. No commenters addressed this provision.

VII. Part 108—Filing Copies of Reports and Statements With State Officers

11 CFR 108.7 Effect of State Law

Section 108.7 addresses Federal preemption of State law based on 2 U.S.C. 453(a) and its legislative history. Paragraph (c) lists the types of State laws that are not preempted or superseded by the Act and the regulations. BCRA amended the Act at 2 U.S.C. 453(b), providing for the application of State law to the use of non-Federal funds for the purchase or construction by a State or local party of its office building. Federal preemption continues to exist when Federal funds are used. This amendment is implemented in new section 300.35. Paragraph (c) of section 108.7 is therefore being amended to include the application of State law to the use of non-Federal funds for the purchase or construction of a State or local party office building in accordance with 11 CFR 300.35.

VIII. Part 110—Contribution and Expenditure Limitations and Prohibitions

11 CFR 110.1 Contributions by Persons Other than Multicandidate Political Committees

BCRA amended 2 U.S.C. 441a(a)(1) to raise the amount that individuals may donate to State committees of political parties from $5,000 to $10,000 in any

calendar year. New 11 CFR 110.1(c)(5) incorporates this increased contribution limitation, which is effective January 1, 2003. The principal Congressional sponsors of BCRA included in their comment an emphasis upon the fact that this is an increase in the limitation on Federal funds. No other comments on this provision were received.

IX. Part 114—Corporate and Labor Organization Activity

11 CFR 114.1 Definitions

The pre-BCRA text of 11 CFR 114.1(a)(2)(ix) follows the repealed statutory provision as to the purchase or construction by a national or State party committee of an office facility. It is therefore being deleted and replaced with an annotated cross-reference to new 11 CFR 300.35 which describes how the purchase or construction of an office building by a State or local party committee may be funded. A national committee's office building must be purchased or constructed only with Federal funds. *See* new section 300.10. The texts of the regulations currently at 11 CFR 100.7(b)(12) and 100.8(b)(13), which are similar to the pre-BCRA text of section 114.1(a)(2)(ix), are the subject of a separate rulemaking. *See Notice of Proposed Rulemaking,* 67 FR 40881 (June 14, 2002).

X. Part 300—Non-Federal Funds

11 CFR 300.1 Scope and Effective Date, and Organization

The bulk of the new rules that address non-Federal funds of political party committees are contained in 11 CFR part 300. Section 300.1 addresses the scope of new part 300, sets forth the effective date of the provisions contained in the new part, and outlines the organization of the new part. Specifically, paragraph (a) of section 300.1 states that new part 300 implements changes to the FECA enacted by Title I of BCRA. It also notes that nothing in part 300 is intended to alter the definitions, restrictions, liabilities, and obligations imposed by sections 431–455 of Title 2 of the United States Code or in the regulations prescribed thereunder in 11 CFR parts 100–116.

The effective date of BCRA, except where otherwise stated, is November 6, 2002. *See* 2 U.S.C. 431 note, section 402(a). Consistent with BCRA, paragraph (b) of section 300.1 states that part 300 takes effect on November 6, 2002, except for the following: (1) Where otherwise stated in part 300; (2) subpart B of part 300 relating to State, district, and local party committees does not apply with respect to runoff elections, recounts, or election contests resulting from elections held prior to November 6, 2002; (3) the increase in individual contribution limits to State party committees as set forth in proposed 11 CFR 110.1(c)(5) applies to contributions made on or after January 1, 2003; and (4) national parties must spend any remaining non-Federal funds received before November 6 and in their possession on that date before January 1, 2003, subject to the transition rules set forth in proposed 11 CFR 300.12.

Finally, paragraph (c) of section 300.1 explains that part 300 is organized into five subparts, with each subpart addressing a specific category of persons affected by BCRA. Subpart A of part 300 prescribes rules pertaining to national party committees; subpart B prescribes rules pertaining to State, district, and local party committees and organizations; subpart C addresses rules affecting certain tax-exempt organizations; subpart D prescribes rules pertaining to Federal candidates and Federal officeholders; and subpart E prescribes rules pertaining to State and local candidates. In addition, BCRA requires changes in other parts of Title 11 of the *Code of Federal Regulations,* which are also addressed in this rulemaking. One commenter supported the provisions of this section. The final rules follow the proposed rules, with the exception of minor revisions to clarify the scope of each subpart.

11 CFR 300.2 Definitions

A. 11 CFR 300.2(a) Definition of ''501(c) organization that makes expenditures or disbursements in connection with a Federal Election''

New 11 CFR 300.2(a) defines a 501(c) organization ''that makes expenditures or disbursements in connection with a Federal election.'' BCRA prohibits national and State party committees, their officers and agents, and certain entities associated with them, from soliciting any funds for, or making or directing any donations to, 501(c) organizations that fit this definition.

The NPRM sought comments on whether the definition of 501(c) organizations affected by the prohibition on party fundraising and donations should contain a temporal requirement so that this prohibition is not overbroad and does not encompass, for example, an organization that made expenditures and disbursements in connection with a Federal election many years ago but has not done so recently and does not plan to do so in the future.

Commenters were in general agreement that a temporal requirement was a good idea. Several commenters suggested that the prohibition should encompass organizations that have made expenditures and disbursements in connection with a Federal election during the past three election cycles, or six years. Other commenters stated that the definition was overbroad without a temporal requirement but offered no suggestion for a specific time frame.

The final rule at 11 CFR 300.2(a) defines a 501(c) organization ''that makes expenditures or disbursements in connection with a Federal election'' as one that plans to make such expenditures or disbursements, including for Federal election activity, within the current election cycle or plans to pay a debt incurred in a prior election cycle for making such expenditures or disbursements. Because BCRA uses the present tense in referring to affected 501(c) organizations, the Commission believes that the prohibition on party fundraising should only apply to Section 501(c) organizations that undertake such spending within the current two-year election cycle. The definition in new 11 CFR 300.2(a) also includes organizations that plan to pay debts incurred in a prior election cycle for such expenditures or disbursements. This will prevent, for example, an organization from certifying that it does not plan to make expenditures or disbursements in connection with a Federal election in the current 2-year election cycle, if it receives donations or fundraising assistance from a party committee and uses those funds to pay off debt incurred for such expenditures or disbursements relating to a prior election cycle.

The proposed definition in the NPRM would have also delineated the types of activity that constitute expenditures or disbursements in connection with a Federal election. One commenter expressed support for this proposed rule. The final rule does not, however, set out specific activities that constitute such expenditures or disbursements. Federal election activity is defined at new 11 CFR 100.24 so that one component of the definition is clear. Moreover, the Commission believes that advisory opinions and closed enforcement matters provide guidance as to what constitutes activities in connection with a Federal election. Attempting to include specific activities in the definition in 11 CFR 300.2(a) might result in an overbroad definition.

B. 11 CFR 300.2(b) Definition of ''Agent''

Many of the prohibitions and restrictions of BCRA apply to a principal entity, such as a political party

committee or a candidate, and to the ''agents'' of such principals where they act on behalf of those principals. *See, e.g.,* 2 U.S.C. 441i(a)(1), (2); 2 U.S.C. 441i(b)(1); 2 U.S.C. 441i(e)(1). Congress did not define the term, ''agent,'' in BCRA. In the NPRM, the Commission proposed a regulatory definition framed in terms of ''a person who has actual express oral or written authority'' to act on behalf of a principal. This definition would have defined ''actual authority'' as ''instructions, either oral or written,'' from the principal. The Commission solicited comments on several aspects of this proposed definition, such as the potential applicability of the definition to volunteers, whether the principal's actual knowledge of the putative agent's activities is relevant, and the potential applicability of the concept of apparent authority.

The Commission received many comments on the proposed definition of agent. Several commenters found the proposed definition ''too narrow.'' One described the requirement that an agent's authority must be actual and express to be a ''loophole that would utterly swallow the rule,'' arguing that in the ''real world'' fundraising is accomplished largely through agents without express authority in a ''technical'' or ''legal'' sense. The principal Congressional sponsors of BCRA commented that the proper definition of ''agent'' is critical to prevent evasion of the ''soft-money'' prohibitions at the center of Title I of BCRA. The definition, they believe, should encompass ''anyone who has an agency relationship under common law,'' including apparent authority. The principal Congressional sponsors and a public interest group commented that the new definition should not be narrower than the definition of agent currently used by the Commission in regulating independent expenditures. *See* 11 CFR 109.1(b)(5). The sponsors also commented that the Commission should not exclude volunteers and vendors *per se.* A public interest group also urged the Commission to include apparent authority within the definition. This group argued that ''bestowing'' a title or position on an individual implies that the individual is working on behalf of the principal who bestowed the title or position.

In contrast, other commenters, comprised of national and State political party committees and labor organizations, applauded the proposed rule's conjunctive requirement that the agent's authority must be actual and express. Three national party committees commented that the definition should be further limited to individuals with ''substantive decision-making authority.'' Many of these commenters stressed that the Commission should consider two issues in implementing the regulatory definition of ''agent.'' The first issue is the nature of an agent's ''individual liability'' for his or her own actions. The second issue is the perceived ''vicarious liability'' of the principal. With regard to the first issue, several commenters, including a State party committee, an association of State party officials, and several national party committees, suggested the Commission use 11 CFR 109.1(b)(5) as a model for the new definition, presumably modified to provide that authority must be actual and express. Regarding the second issue, several commenters urged the Commission to give full effect to a requirement that the agent must be acting on behalf of the principal before the principal incurs liability derived from the agent's actions. Two labor organizations commented that the principal's derivative liability should not extend beyond activities the agent has been specifically authorized to conduct. Two national party committees commented that the final definition must impose liability only when a principal exercises actual control over the actions of the agent, arguing that it would be unfair to impose liability for actions beyond the principal's control. Another commenter, a State party committee, framed its suggestion in terms of limiting a principal's liability to actions taken by an agent on the principal's ''explicit instructions.''

The final rules define ''agent'' for purposes of Title I of BCRA as ''any person who has actual authority, either express or implied.'' The final rules make clear that the definition of ''agent'' is limited to those individuals who have actual authority, express or implied, to act on behalf of their principals and does not apply to individuals who do not have any actual authority to act on their behalf, but only ''apparent authority'' to do so. The final regulation thus differs from the regulation proposed in the NPRM. The Commission makes this change for reasons articulated by the United States Supreme Court. In *Community for Creative Non-Violence* v. *Reid, 490 U.S. 730, 739 (1989)* the High Court held that the defining of statutory terms should be guided by ''settled meaning under * * * the common law * * * unless the statute otherwise dictates.'' In this regard, the Commission notes that under the common law of agency, an ''agent's authority may be actual or apparent.'' *Moriarty* v. *Glueckert Funeral Home, Ltd.,* 155 F.3d 859, 865–866 (7th Cir. 1998) (quoting Restatement (Second) of Agency, 26). But the Supreme Court has made it equally clear that not every nuance of agency law should be incorporated into Federal statutes where full incorporation is not necessary to effect the statute's underlying purpose. *See Faragher* v. *City of Boca Raton,* 524 U.S. 775, 802 n.3 (1998) (The ''obligation is not to make a pronouncement of agency law in general or to transplant [the Restatement (Second) of Agency into a Federal statute, but] is to adapt agency concepts to the [statute's] practical objectives.'')

For these reasons, the definition of ''agent'' in the final regulation does not incorporate apparent authority. ''[A]pparent authority to do an act is created as to a third party by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third party to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.'' Restatement (Second) of Agency, 27. As has been noted by commenters, apparent authority is largely a concept created to protect innocent third parties who have suffered monetary damages as a result of reasonably relying on the representations of individuals who purported to have, but did not actually have, authority to act on behalf of principals. Unlike other legislative areas, such as consumer protection and anti-fraud legislation, BCRA does not affect individuals who have been defrauded or have suffered economic loss due to their detrimental reliance on unauthorized representations. Rather, the Commission interprets Title I of BCRA to use agency concepts to prevent evasion or avoidance of certain prohibitions and restrictions by individuals who have actual authority and who do act on behalf of their principals. In this light, apparent authority concepts are not necessary to give effect to BCRA.

It is necessary, however, to define ''agent'' to include implied and express authority in order to fully implement Title I of BCRA. Otherwise, agents with actual authority would be able to engage in activities that would not be imputed to their principals so long as the principal was careful enough to confer authority through conduct or a mix of conduct and spoken words. The comments and testimony received by the Commission perhaps reveal some confusion about the term ''implied authority.'' Implied authority *is* a form of actual authority. *Moriarty, supra,* 155 F.3d at 865–866 (7th Cir. 1998) (quoting Restatement (Second) of Agency, 26)

(actual authority may be express or implied). Implied authority should not be confused with apparent authority, which is a distinct concept. Restatement (Second) of Agency, 8, cmt a. It is well settled that whether an agent has implied authority is within the control of the principal. Thus, the Commission emphasizes that a principal may not be held liable, under an implied actual authority theory, unless the principal's own conduct reasonably causes the agent to believe that he or she had authority. For example, a party committee cannot be held liable for the actions of a rogue or misguided volunteer who purported to act on behalf of the committee, unless the committee's own written or spoken word, or other conduct, caused the volunteer to reasonably believe that the committee desired him or her to so act. Once an agent has actual authority, however, ''[u]nless otherwise agreed, authority to conduct a transaction includes authority to do acts which are incidental to it, usually accompany it, or are reasonably necessary to accomplish it.'' Restatement (Second) of Agency, 35; *see U.S.* v. *Flemmi,* 225 F.3d 78, 85 (1st Cir. 2000).

Title I of BCRA refers to ''agents'' in order to implement specific prohibitions and limitations with regard to particular, enumerated activities on behalf of specific principals. The final regulation limits the scope of the definition accordingly in paragraphs (b)(1) through (b)(4). Each provision in paragraphs (b)(1) through (b)(4) is tied to a specific provision in Title I of BCRA that relies on agency concepts to implement a specific prohibition or limitation. The Commission emphasizes that, under the Commission's final regulation, a principal cannot be held liable for the actions of an agent unless (1) the agent has actual authority, (2) the agent is acting on behalf of his or her principal, and (3) the agent is engaged in one of the specific activities described in paragraphs (b)(1) through (4).

Paragraph (b)(1) limits a national party committee's liability to an agent's authorized actions with regard to two activities. The first is soliciting, directing, or receiving any contribution, donation, or transfer of funds on behalf of the national party committee. 2 U.S.C. 441i(a)(1), (2). The second is soliciting funds for, or making or directing donations to, section 501(c) and 527 organizations. 2 U.S.C. 441i(d).

Paragraph (b)(2) limits the liability of State, district, or local political party committees to the actions of an agent who has actual authority in four particular areas. The first is to make expenditures or disbursements of any funds for Federal election activity on behalf of the State, district or local party committee. 2 U.S.C. 441i(b)(1). The second is to transfer, or to accept a transfer of, funds to make expenditures or disbursements for Federal election activity on behalf of the State, district or local party committee. 2 U.S.C. 441i(b)(2)(B)(iv). The third is to engage in joint fundraising activities on behalf of the State, district or local party committee with any person if any part of the funds raised are used, in whole or in part, to pay for Federal election activity. 2 U.S.C. 441i(b)(2)(C). The fourth is to solicit funds for, or to make or direct donations to, section 501(c) and 527 organizations. 2 U.S.C. 441i(d).

Paragraph (b)(3) limits the liability of a Federal candidate to the actions of an agent who has actual authority to solicit, receive, direct, transfer, or spend funds in connection with any election on behalf of the Federal candidate. 2 U.S.C. 441i(e)(1). The Commission notes that the exception to 2 U.S.C. 441i(e)(1)'s general rule found in paragraph (e)(2) of that section also applies to agents of such Federal candidates who are or were State or local candidates.

Paragraph (b)(4) applies to State candidates, and limits their liability to actions taken by their agents who have actual authority to spend funds for public communications on their behalf. 2 U.S.C. 441i(f).

Under the Commission's final rules defining ''agent,'' a principal can only be held liable for the actions of an agent when the agent is acting on behalf of the principal, and not when the agent is acting on behalf of other organizations or individuals. Specifically, it is not enough that there is some relationship or contact between the principal and agent; rather, the agent must be acting on behalf of the principal to create potential liability for the principal. This additional requirement ensures that liability will not attach due solely to the agency relationship, but only to the agent's performance of prohibited acts for the principal. In light of the foregoing, it is clear that individuals, such as State party chairmen and chairwomen, who also serve as members of their national party committees, can, consistent with BCRA, wear multiple hats, and can raise non-Federal funds for their State party organizations without violating the prohibition against non-Federal fundraising by national parties.

C. 11 CFR 300.2(c) Definition of ''Directly or Indirectly Established, Financed, Maintained, or Controlled''

11 CFR 300.2(c) defines ''directly or indirectly establish, finance, maintain, or control,'' a term that is used in several provisions of BCRA. The term appears in BCRA in the context of national party committees (*see* 2 U.S.C. 441i(a)(2)), of State, district, and local political party committees (*see, e.g.,* 2 U.S.C. 441i(b)(2)(B)(iii)), and of Federal candidates and Federal officeholders (*see, e.g.,* 2 U.S.C. 441i(e)(1)). The phrase ''established, financed, maintained, or controlled,'' without the modifier ''directly or indirectly,'' was already used in the anti-proliferation provisions of the FECA and in the Commission's ''affiliation'' regulation. *See* 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g), and 110.3.

Paragraph (c)(1) of section 300.2 enumerates the persons to whom the regulation applies, and employs the shorthand ''sponsor'' to refer collectively to these persons. A public interest group commented that the regulation should apply to national, as well as to State, district, and local political party committees. Accordingly, given that the term, ''directly or indirectly established, financed, maintained, or controlled,'' is applied to national party committees in 2 U.S.C. 441i(a)(2), the Commission is incorporating this suggestion in the final regulation. Another commenter suggested that agents should be included in the description of the term ''sponsor,'' rather than addressed in another part of the rule. The final rules also adopt this suggestion. In paragraph (c)(1), the statutory concept of ''indirect'' establishment, financing, maintenance, or control is addressed by including actions taken by a sponsor's agents on behalf of the sponsor.

The version of 11 CFR 300.2(c) proposed in the NPRM defining the term ''directly or indirectly establish, finance, maintain, or control'' included factors that extended beyond the affiliation provisions of 11 CFR 100.5(g). Several commenters, including an association of State party officials, several national party committees, and two State party committees, objected to this portion of the regulation proposed in the NPRM, and suggested uniformly that the final regulation should be based solely upon the existing affiliation regulation in 11 CFR 100.5(g), which one commenter described as ''relatively well-established and well-understood.'' A Latino rights group and a taxpayers' organization concurred with this approach. In addition, a civil rights

organization stated that the regulation proposed in the NPRM was ''not only vague as to provide no practical guidance, but also is likely to deem entities as being 'controlled' by a party committee when the BCRA never intended to reach such entities.'' On the other hand, two public interest groups supported the Commission's proposed use of factors extending beyond the reach of 11 CFR 100.5(g), one of whom argued that Congress used the term, ''directly or indirectly established, financed, maintained, or controlled,'' in several contexts to ''make it clear that Congress wanted to move beyond the current affiliation rules.''

The Commission has concluded that the affiliation factors laid out in 11 CFR 100.5(g) properly define ''directly or indirectly established, financed, maintained, or controlled'' for purposes of BCRA. Therefore, in paragraph (c)(2), the affiliation factors found at 11 CFR 100.5(g)(4)(ii) have been recast in the terminology demanded by the BCRA context. Paragraphs (c)(2)(i) through (x) of section 300.2 generally correspond to paragraphs (g)(4)(ii)(A) through (J) of section 100.5. This change in terminology, for example, substituting ''entity'' for ''committee,'' and ''sponsor'' for ''sponsoring organization,'' recognizes that affiliation concepts are being applied in a different context. Besides the changes in terminology, the words ''and otherwise lawfully'' have been added to the phrase about joint fundraising in paragraphs (c)(2)(vii) and (viii) of section 300.2(c). This addition is intended to preclude any confusion that might arise between these provisions and the joint fundraising restrictions in subpart B of part 300.

In the NPRM, the Commission sought comment on whether this regulation should be based on the actions and activities of entities occurring solely after November 6, 2002, the effective date of BCRA. The Commission considered taking this course of action to prevent a retroactive application of BCRA or, specifically, to prevent the actions and activities of entities before November 6, 2002, that are legal under current law from creating potential legal liability based on the new requirements of BCRA, which do not take effect until after November 5, 2002. The Commission also asked, alternatively, whether there should be a rebuttable presumption that entities organized before a given date are not directly or indirectly established by a sponsor, provided that the sponsor and the entity are not affiliated. 67 FR 35658.

The principal Congressional sponsors of BCRA and two public interest groups opposed these options. The principal Congressional sponsors stated, ''There is nothing in the statutory language that permits the term * * * to apply only to entities established after the effective date of the Act * * *.'' Such a rebuttable presumption, they continued, would ''create an obvious loophole for organizations established or controlled by members of Congress that are currently raising soft money.'' One of the public interest groups commented that ''grandfathering'' existing entities would ''effectively prop the [soft-money] loophole open.'' The other public interest group opposing this idea said: ''This would, as a practical matter, allow the activity sought to be regulated by BCRA to continue on an unregulated basis through the preexisting entity.''

A non-profit organization commented that the Commission should not apply the new regulation to existing entities that may have been directly or indirectly established, financed, maintained, or controlled by a sponsor because, ''otherwise, the rule would go against any conceivable precept of the BCRA having an effective date after the 2002 general elections.'' This organization asserted, ''the only relevant question * * * is whether an entity is controlled by a sponsor after the effective date of BCRA.'' This organization supported the idea of a rebuttable presumption. Several party committees urged the Commission to apply the regulation if there is affiliation ''on or after the effective date of BCRA.'' Notably, a civil rights organization concluded that ''the only relevant question for the purposes of BCRA is whether an entity is controlled by a sponsor after the effective date of BCRA.'' The civil rights organization further stated that ''we agree with the Commission's suggestion that there should be a rebuttable presumption that entities 'organized' before a given date are not directly or indirectly established by a sponsor. [To proceed otherwise] would go against any conceivable precept of the BCRA having an effective date after the 2002 elections.''

For the foregoing reasons, the Commission has concluded that BCRA should not be interpreted in a manner that penalizes people for the way they ordered their affairs before the effective date of BCRA. This will help ensure that BCRA is not enforced in a retroactive manner with respect to activities that were legal when performed. Therefore, the Commission has added, in the final rules, a new paragraph (c)(3). The paragraph, under the heading, ''safe harbor,'' provides that on or after November 6, 2002 (the effective date of BCRA), an entity shall not be deemed to be directly or indirectly established, maintained, or controlled by another entity unless, based on the entities' actions and activities solely after November 6, 2002, they satisfy the requirements of 11 CFR 300.2(c). The Commission notes that financing, within the meaning of this definition, presents special considerations. Therefore, with regard to financing, paragraph (c)(3) provides that if an entity receives funds from another entity prior to November 6, 2002, and the recipient entity disposes of the funds prior to November 6, 2002, the receipt of such funds prior to November 6, 2002 shall have no bearing on determining whether the recipient entity is financed by the sponsoring entity within the meaning of 11 CFR 300.2(c). If funds received from another entity prior to November 6, 2002, are spent by the recipient entity on or after that date, that fact will be relevant to a determination under section 300.2(c).

In the NPRM, the Commission sought comment as to whether there should be an exception for a *de minimis* level of funding by a sponsor. 67 FR 35659. Only one commenter, a State party committee, supported this idea and suggested $5,000 for this purpose. The Commission has not included a *de minimis* exception in the final regulation. Such an exception does not square with the overall, situation-specific approach of the regulation, which is to weigh factors such as ''[w]hether a sponsor or its agent provides funds or goods in a significant amount or on an ongoing basis to the entity'' ''in the context of the overall relationship between sponsor and the entity.'' *See* 11 CFR 300.2(c)(2), (c)(2)(vi). Nor does a *de minimis* exception appear to be supported by the plain language of the statute.

Paragraph (c)(4) (which was labeled (c)(2) in the version of the regulation proposed in the NPRM) provides a mechanism for a sponsor or an entity to request a determination by the Commission through the advisory opinion process that the sponsor is no longer deemed to finance, maintain, or control an entity, even if the sponsor established the entity. There have been several changes from the version of the regulation published in the NPRM. In paragraph (c)(4)(i), the Commission has clarified that the requestor of an advisory opinion must demonstrate that the entity is not directly or indirectly financed, maintained, or controlled by the sponsor. Under paragraph (c)(4)(ii) of the final rules, the requestor must demonstrate that all material connections between the sponsor and

the entity have been severed for two years.

The Commission notes that nothing in paragraph (c)(4) should be construed to require any given entity that has not directly or indirectly established, financed, maintained, or controlled another entity to obtain a determination to that effect before the two entities may operate independently of each other. Therefore, in the final rules, the Commission has added a new paragraph (c)(4)(iii), which provides that nothing in section 300.2(c) should be construed to require entities that are separate organizations on November 6, 2002, to obtain an advisory opinion to operate separately from one another.

D. 11 CFR 300.2(d) Definition of ''Disbursement''

Both FECA and BCRA use the term ''disbursement,'' but do not provide a definition. The NPRM contained a proposed definition of ''disbursement'' as ''any purchase or payment made by a political committee or organization that is not a political committee.'' One commenter pointed out that this term should not be limited to payments by political parties or organizations, since it covers spending by individuals or entities that do not constitute political parties or organizations. *See,* for example, 2 U.S.C. 441i(b)(1), which refers to disbursements by (among others) ''an association or similar group of candidates * * * or of individuals.'' The Commission, therefore, is revising the proposed definition in the final rule to clarify that it covers purchases and payments by a political party or other person, including an organization that is not a political committee, that is nevertheless subject to FECA or BCRA.

E. 11 CFR 300.2(e) Definition of ''donation''

In BCRA, Congress uses but does not define the term ''donation.'' The Commission proposed in the NPRM to define a ''donation,'' in 11 CFR 300.2(e), as a payment, gift, subscription, loan, advance, deposit, or anything of value given to a non-Federal candidate, party committee, 501(c) organization, or 527 organization, but not including a contribution or transfer.

Comments were sought on specifically excluding from ''donation'' some of the exemptions to ''contribution'' set forth in existing 11 CFR 100.7(b). The comments were split on this approach.

The Commission did not include these exemptions, or any others, in the final rule, because donations in many cases will be essentially a matter of State law, and thus the inclusion or exclusion of certain payments should be left to State campaign finance law. For example, in the Levin Amendment, donations of Levin funds must be in accordance with State law, with one Federal limitation: a $10,000 amount limitation per year per donor. 2 U.S.C. 441i(b)(2)(B)(iii). The Commission believes States should be free to craft their own exemptions to donations of Levin funds, subject only to the $10,000 overall limitation imposed by BCRA.

Several commenters asked the Commission to specifically incorporate additional exemptions, such as money spent for redistricting, election recounts, FECA civil penalties, and legal defense funds. The exemption for recounts is addressed in the Commission's current rules at 11 CFR 100.7(b)(20); as are payments for civil penalties, *cf.* 11 CFR 9034.4(b)(4). The Commission's interpretations on the raising and spending of funds for the purposes of redistricting were done in the context of Advisory Opinions that interpreted the terms ''contribution'' and ''expenditure.'' *See* Advisory Opinions 1990–23 and 1982–37. The question of legal defense funds implicates not only the definition of ''contribution,'' but also the Commission's personal use regulations at 11 CFR 113.1(g) in the case of a candidate legal defense fund. With respect to legal defense funds or any other legal expenses incurred by national party committees, the Commission does not interpret the broad language of 2 U.S.C. 441i(a) to permit the receipt or use of any non-Federal funds for such purposes.

As with the exemptions in 11 CFR 100.7(b), discussed above, State laws may address each of these payments in a variety of different ways. In addressing these issues, the Commission does not believe it is appropriate to require States to follow the Commission's precedents, which were established to implement the specific, detailed provisions of the FECA regarding ''contributions'' and ''expenditures'' for the purpose of influencing Federal elections. Moreover, to do so could present issues involving the preemption of State law.

Several commenters suggested that the definition of ''donation'' be expanded to include anything of value given to a ''person,'' to conform with the use of this term in 11 CFR 300.10, 300.11, 300.37, 300.50, and 300.51. The Commission has made this change to 11 CFR 300.2(e), given the broad statutory reach of the term ''donation'' in 2 U.S.C. 441i(a)(1). The Commission has also deleted the reference to ''transfers,'' because those are covered elsewhere in these rules. *See* 11 CFR 300.34.

F. 11 CFR 300.2(f) Definition of ''Federal Account''

Paragraph (f) of section 300.2 defines ''Federal account'' as an account at a campaign depository that contains funds to be used in connection with a Federal election. The term ''financial depository institution'' proposed in the NPRM has been changed to the more accurate term ''campaign depository.'' *See* 2 U.S.C. 432(h) and 11 CFR 103.2.

Some commenters asked the Commission to include in this definition the requirement that only Federal funds and funds transferred for the purpose of paying the non-Federal share of allocated expenditures may be deposited into these accounts. This topic is treated elsewhere in the Commission's rules and in this rulemaking. *See* 11 CFR 103.3, 106.5(g), 300.30, and 300.33.

G. 11 CFR 300.2(g) Definition of ''Federal Funds''

Paragraph (g) of section 300.2 defines ''Federal funds'' to mean funds that comply with the limitations, prohibitions, and reporting requirements of the FECA. The Commission received no comments regarding this definition.

H. 11 CFR 300.2(h) Definition of ''Levin Account''

Section 300.2(h) defines ''Levin account'' as an account established by a State, district, or local committee of a political party pursuant to 11 CFR 300.30 for purposes of making expenditures or disbursements for Federal election activity or non-Federal activity (subject to State law) under 11 CFR 300.32(b). The Commission revised the definition proposed in the NPRM to clarify that these accounts must be established at a campaign depository in accordance with 2 U.S.C. 432(h).

The NPRM raised substantive questions on the operation of these accounts. The comments that addressed these questions are discussed in connection with 11 CFR 300.30, below.

I.11 CFR 300.2(i) Definition of ''Levin Funds''

As explained above, BCRA's Levin Amendment provides that State, district, and local political party committees may spend certain non-Federal funds for Federal election activities if those funds comply with certain requirements. 2 U.S.C. 441i(b)(2)(A)(ii). Thus, these funds are unlike Federal funds, which are fully subject to the Act's requirements, and unlike ordinary non-Federal funds because they are subject to certain additional requirements under BCRA.

Section 300.2(i) defines these funds as ''Levin funds,'' with the intention that ''Levin funds'' become a definite, unambiguous reference to such funds. The Commission has slightly modified the definition proposed in the NPRM for streamlining purposes, but has made no substantive changes.

One commenter requested that the Commission use a ''functionally descriptive'' term, such as ''specially allocated,'' for these funds, rather than the name of their legislative sponsor. It proved difficult, however, to draft a term that clearly and unambiguously includes these funds, while excluding all others. For that reason, the Commission has retained the term ''Levin funds'' in the final rules.

Two commenters suggested that the definition should include the limits on the use of the term ''Levin funds'' found at 2 U.S.C. 441i(b)(2)(A). These restrictions go to the use of the funds, and are implemented in 11 CFR 300.32, to which the definition in 11 CFR 300.2(i) already expressly refers. Therefore, these restrictions are not repeated in this definitional paragraph.

J. 11 CFR 300.2(j) Definition of ''Non-Federal Account''

Section 300.2(j) defines ''non-Federal account'' as an account that contains funds to be used in connection with a State or local election or allocable expenses under 11 CFR 106.7, 300.30, or 300.33. The term ''financial depository institution'' proposed in the NPRM has been deleted because non-Federal accounts are not required to comply with 2 U.S.C. 432(h).

Consistent with the revisions to 11 CFR 106.7 discussed above, the definition has been expanded to include accounts used for payment of certain allocable activities. The account may also serve as a depository for Levin funds, provided that the committee complies with the requirements of 11 CFR 300.30, below.

No commenters addressed this paragraph.

K. 11 CFR 300.2(k) Definition of ''Non-Federal Funds''

This section defines ''non-Federal funds'' as funds that are not subject to the limitations and prohibitions of the Act. No commenters addressed this definition.

L. 11 CFR 300.2(m) and (n) Definitions of ''To Solicit,'' and ''To Direct''

The NPRM proposed a definition of ''to solicit or direct'' a contribution or donation, which would be located at 11 CFR 300.2(m). The proposed definition included a request, suggestion, or recommendation to make a contribution or donation, including those made through a conduit or intermediary. The Commission's final rule defines ''to solicit'' as ''to ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary.'' Similarly, the Commission defines ''to direct'' as ''to ask a person who has expressed an intent to make a contribution, donation, or transfer of funds, or to provide anything of value, to make that contribution, donation, or transfer of funds, or to provide that thing of value, including through a conduit or intermediary.''

Comment was sought as to whether the proposed definition was too broad or narrow, as well as to whether the term ''direct'' in BCRA should be interpreted to follow the earmarking rules regarding contributions directed through a conduit or intermediary under 2 U.S.C. 441a(a)(8). Comment was also sought as to whether the passive providing of information in response to an unsolicited request for information should be specifically excluded from this definition.

Two commenters, a labor organization and a public interest organization, expressed qualified support for the proposed rule. The labor organization stated that it concurred with the proposed rule, and that it particularly endorsed the express acknowledgment that the mere provision of information or guidance as to applicable legal requirements does not fall within the statutory language. The public interest organization stated that the proposed rule was ''generally consistent'' with the letter and spirit of BCRA. For purposes of clarity, it suggested that the proposed rule be revised to read: ''Merely providing information or guidance as to the requirements of applicable law is not a solicitation.''

In contrast, five commenters argued that the proposed rule was too vague or broad. A group representing certain State parties stated that the phrase ''request, suggest and recommend'' is an invitation for endless Commission investigation. This commenter urged that ''solicit'' be limited to an explicit request that a person make a contribution. This commenter also supported including examples in the Explanation and Justification of what is not soliciting or directing. Likewise, national party political organizations asserted that the final rule should not contain a reference to ''suggestion'' because that is too vague a term, and compels inquiry into whether a communication conveys a sense, or creates an impression, of a solicitation. These commenters believed BCRA's rules should be concrete. This group further urged that clear exclusions should be provided, such as for inquiries into positions or issues, as well as political speech or commentary to an audience who may respond with contributions in the absence of an express request for them.

Another commenter, a public interest organization, stated that ''ambiguous standards'' such as ''suggest[ion]'' or ''series of conversations'' will merely lead to confusion. This commenter suggested that the Commission look to past advisory opinions for guidance. Similarly, a State and a national political party argued that ''request, suggest and recommend'' is unconstitutionally vague and potentially overbroad, as it would involve an investigation into what a person meant in a series of conversations, and would thus chill political speech. A Latino rights group and a taxpayers' organization commented that in light of the ''severe restrictions now imposed by BCRA,'' there need to be ''clear definitive guidelines'' in this area. Specifically, the Latino rights group and the taxpayers' organization argued that ''[a]mbiguous standards such as 'suggestion' or a 'series of conversations which taken together constitute a request for a contribution or donation, but which do not do so individually' will lead to more confusion and allegations of violations.'' Several party committee commenters argued that solicitation should be confined to an explicit request that an entity make a contribution.

Three commenters argued that the proposed rule was too lenient. One public interest organization stated that the discussion should include scenarios where a person suggests where a contributor, who has already decided to make a contribution, should send their contribution. This commenter read the proposed rule as confining itself to candidates, committees and nonprofits, and suggested it should also apply to solicitations from individuals, partnerships, labor organizations, and corporations. Another public interest organization agreed with the first point of the previous response. The sponsors of BCRA stated that the proposed definition failed to capture the plain meaning of the words and to effectuate the central goal of the law. They supported the position regarding suggestions to already-willing contributors. These commenters read the proposed rule in the same manner as the public interest organization, as if

it only applies to candidates, committees and nonprofits. They stated that, ''certain provisions in the Act apply to soliciting contributions from any 'person,' which would obviously include individuals and corporations.'' They urged that the rule be modified to reflect this.

The Commission has determined that the concepts of ''to solicit'' and ''to direct'' embody different activity, and they thus should be separately defined. Accordingly, 11 CFR 300.2(m) defines ''to solicit,'' and 11 CFR 300.2(n) contains the definition of ''to direct.'' Both definitions include ''transfer of funds'' and ''anything of value'' in addition to ''contribution'' and ''donation,'' because the phrases ''transfer of funds'' and ''anything of value'' or ''any other thing of value'' appear several times *in seriatim* with ''contribution'' and ''donation'' in applicable rules. *See, e.g.,* 11 CFR 300.2(b)(1)(i).

Comments were sought as to whether the concept of soliciting should apply to a series of conversations which, when taken together, constitute a request for contributions or donations. BCRA's sponsors and several public interest organizations supported applying the definition to a series of conversations if, when taken as a whole, they are consistent with a solicitation, stating that, otherwise, restrictions will be easily circumvented. One group of national political party organizations opposed applying the rule to a series of conversations, stating that it would involve heavy government involvement in deciphering political speech and that the Commission should look only at express statements.

The Commission does not believe it is appropriate to promulgate a regulation that would require examination of a private conversation to impute intent when the conversation is not clear on its face. The Commission is concerned that the ability to impute intent could lead to finding a violation when the individual who made the comment may have had no intention whatever of soliciting a contribution. Such a result is not dictated by BCRA's statutory language, and would raise constitutional concerns.

For the reasons set forth above, the Commission is not defining ''to solicit'' in terms of a series of conversations.

Regarding the definition of the term ''to direct,'' the Commission sought comment as to whether it should be interpreted to follow earmarking rules under 2 USC 441a(a)(8). A group of State party leaders supported limiting ''to direct'' to the definition at 11 CFR 110.6(b)(2), as did one of the national political parties. One of the public interest organizations opposed this approach, stating that this was inconsistent with BCRA and far too narrow an approach. None of the commenters explained their criticisms in detail.

This issue of the meaning of ''to direct'' is also tied to another question asked by the Commission: whether the passive providing of information in response to an unsolicited request for information should be specifically excluded in this definition. Two commenters, a public interest organization and the sponsors, felt that the Commission should not exclude providing information if that information includes the names of organizations to which contributions can be made. One commenter, a national political party, said that such information should be excluded, because any other approach would be unworkable and would lead to endless accusations and investigations.

The Commission concludes that a precise definition in this context is necessary to avoid vague and overbroad application of the term. Therefore, the regulation defines ''to direct'' as ''to ask a person who has expressed an intent to make a contribution, donation, or transfer of funds, or to provide anything of value, to make that contribution, donation, or transfer of funds, or to provide that thing of value.''

The final rules in 11 CFR 300.2(m) and (n) each include a statement indicating that merely providing information or guidance as to the requirements of particular law is not solicitation or direction. Each rule confines itself to defining the term as it appears in part 300 of the Commission's regulations.

M. 11 CFR 300.2(o) Definition of ''Individual Holding Federal Office''

New section 300.2(o), which parallels 11 CFR 100.4 (definition of ''Federal office'') and 11 CFR 113.1(c) (definition of ''Federal officeholder''), has been added for the reader's convenience. Consistent with those sections and 2 U.S.C. 431(3), it states that ''individual holding Federal office'' means an individual elected to or serving in the office of President or Vice President of the United States; or a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress of the United States. It does not, however, include officeholders who are appointed to positions such as the secretaries of departments in the executive branch, or other positions that are not filled by election.

Subpart A—National Party Committees

11 CFR 300.10 General Prohibitions on Raising and Spending Non-Federal Funds

BCRA prohibits national party committees from raising and spending non-Federal funds, that is, funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act. *See* 2 U.S.C. 441i(a). The Commission is placing the regulations that address this prohibition in a new part of the Code of Federal Regulations, 11 CFR part 300, subpart A. In addition to this new subpart, the Commission is amending several sections of its current rules to conform to these prohibitions. *See* Explanation and Justification for 11 CFR 102.5 and 106.5.

Paragraph (a) of new section 300.10 tracks the language of BCRA, which prohibits national party committees from soliciting, receiving, or directing to another person ''a contribution, donation, or transfer of funds or any other thing of value,'' or spending funds that are not subject to the Act's prohibitions, limitations, and reporting requirements. Accordingly, as of November 6, 2002, BCRA's effective date, national party committees must not receive or solicit or direct to another person contributions or donations from corporations, labor organizations or other prohibited sources, and must not receive or solicit or direct to another person contributions or donations from individuals and others that exceed the amount limitations of the Act. Additionally, after a brief transition period set forth in 11 CFR 300.12, discussed below, all expenditures and disbursements made by a national party committee, including donations to State and local candidates and donations and transfers to State party committees, must be made with funds that comply with the limitations, prohibitions, and reporting requirements of the Act.

BCRA's ban on the raising and spending of non-Federal funds by national party committees has widespread application. Tracking the language in 2 U.S.C. 441i(a)(1) and (2), 11 CFR 300.10(a) and (c) provide that the ban on raising and spending non-Federal funds also applies to the national congressional campaign committees (currently, the Democratic Senatorial Campaign Committee, the National Republican Senatorial Committee, the Democratic Congressional Campaign Committee, and the National Republican Congressional Committee), to officers and agents acting on behalf of a national party committee or a national congressional campaign committee, and

to any entities directly or indirectly established, financed, maintained, or controlled by either. As noted by one of BCRA's congressional co-sponsors during the congressional debate, ''[t]he provision is intended to be comprehensive at the national party level. Simply put, the national parties and anyone operating on behalf of them are not to raise or spend, nor to direct or control, soft money.'' 148 Cong. Rec. H408–409 (daily ed. February 13, 2002) (statement of Rep. Shays).

Thus, under BCRA and 11 CFR 300.10, a Federal candidate or a Federal officeholder acting on behalf of a national congressional campaign committee must not solicit or direct to any person funds from corporations or labor organizations, or funds from individuals or entities in amounts that exceed the Act's contribution limits.

Section 300.10(a)(3) makes clear that national parties cannot raise, spend, or direct to another person Levin funds. *See* 2 U.S.C. 441i(b)(2)(A) and (B) and 11 CFR 300.31, discussed below.

Section 300.10(b) tracks the statutory language at 2 U.S.C. 441i(c). It provides that national parties and others covered by section 300.10(a) must use only Federal funds to finance Federal election activity.

The NPRM noted that the Commission would address in a subsequent rulemaking whether BCRA bans national party committees, and their officers and agents, from directing non-Federal funds to a host committee for a national party convention in light of the statutory language that they are not permitted to direct non-Federal funds to other persons. *See* 2 U.S.C. 441i(a)(1). In comments submitted to the NPRM, BCRA's sponsors stated that since BCRA prohibits national parties and their agents from soliciting or directing non-Federal funds to any person, they could not raise or direct non-Federal funds to host committees. 2 U.S.C. 431(11) of FECA defines ''person'' to include ''a committee * * * or any other organization or group of persons * * * '' It has also been suggested that no further rulemakings are necessary, as a host committee would be treated as any other 501(c) organization under the Act. The Commission has decided that the sponsor's interpretation of BCRA and additional issues concerning BCRA's effect on conventions will be addressed, if necessary, in a future rulemaking on national party conventions.

Virtually all of the commenters opined that the definition of ''agent'' was critically important to many of BCRA's provisions, including 11 CFR 300.10.

The breadth of the national party non-Federal funds prohibition is limited in 2 U.S.C. 441i(a)(2) and in 11 CFR 300.11(c) to the extent that the prohibition applies to officers and agents ''acting on behalf'' of national parties. This limiting construction appears in other Federal statutes and indeed, in some State campaign finance laws. The Commission also has decided to limit the definition of ''agent'' to those individuals who have actual authority to act on behalf of their principals. *See* Explanation and Justification for 11 CFR 300.2(b) above.

Several party committee commenters expressed the view that, despite BCRA's broad prohibition on national parties' raising and spending non-Federal funds, the Commission should consider a rule that would permit national parties to continue to maintain non-Federal accounts devoted specifically to support State and local candidates as long as funds raised for such an account meet the source and contribution limits of the Act. The party committees' position is based on the NPRM's discussion of ''leadership PACs'' maintained by Federal candidates and on statements made by a principal BCRA sponsor during the Senate debate. 148 Cong. Rec. S2140 (daily ed. February 20, 2002) (statement of Senator McCain). Specifically, Senator McCain interpreted 2 U.S.C. 441i(e)(1)(A) and (B) (*see* 11 CFR 300.61 and 300.62) to permit a Federal candidate or officeholder to raise funds for both a Federal and non-Federal account of a leadership PAC, provided that the funds raised for the non-Federal account met the source and contribution limits of the Act. The party committees' comments specifically referenced another statement made by Senator McCain suggesting that an officeholder could solicit a donation up to the Act's contribution limits for the non-Federal account of a leadership PAC, even if the donor had already contributed to the PAC's Federal account. The application of these statutory provisions to leadership PACs and candidate PACs is discussed below. *See* Explanation and Justification for 11 CFR 300.62. Regardless of the application of BCRA to leadership PACs and candidate PACs under 2 U.S.C. 441i(e)(1), however, the plain language of the ban on national party non-Federal fundraising at 2 U.S.C. 441i(a) cannot be plausibly construed to allow party committees to continue to raise non-Federal funds for any purpose. The language is broad in prohibiting a national party committee from soliciting, receiving, or directing to another person ''a contribution, donation, or transfer of funds or any other thing of value'' or spending funds that are not subject to the Act's limitation, prohibitions, and reporting requirements. A separate ''non-Federal'' account, even if it contained funds that complied with the prohibitions of the Act, would not contain funds complying with the amount limitations of the Act, if for example, individuals gave $20,000 per year to a national party's account and also gave another $20,000 to the party's ''non-Federal'' account as suggested by the party committee commenters.

The legislative history supports this statutory interpretation. As noted above, a primary sponsor of BCRA in the House specifically explained the national party non-Federal funds ban as follows: ''The soft money provisions of the Shays-Meehan bill regarding the national political parties operate in a straight-forward way. The national parties are prohibited entirely from raising or spending any soft money * * * The purpose of these provisions is simple: to put the national parties entirely out of the soft money business.'' 148 Cong. Rec. H408 (daily ed. February 13, 2002) (statement of Rep. Shays). According to Congressman Shays, the prohibition ''covers all activities of the national party committees, even those that might appear to affect only non-federal elections.'' Shays further explained the reason for the ban: ''Because the national parties operate at the national level, and are inextricably intertwined with Federal officeholders and candidates, who raise money for the national party committees, there is a close connection between the funding of the national parties and the corrupting dangers of soft money on the federal political process.'' *Id.* at H409.

In addition, a comment by one of BCRA's principal sponsors stated that Congress' intent was absolutely clear that BCRA prohibits national party committees from raising, spending or directing non-Federal funds. He further pointed out that an amendment that would have allowed party committees to continue to raise ''soft money'' subject to limits on the amounts and purposes failed. The Commission notes that a House amendment that would have continued to permit national parties to raise non-Federal funds for certain activities in amounts not exceeding $20,000 per year per person was defeated. *See* 148 Cong. Rec. H459-H465 (daily ed. February 13, 2002).

Finally, the party committee commenters also maintained that the Commission should define the term ''donation,'' which is not defined in BCRA, to exclude funds received by

national party committees for certain purposes such as funds provided for redistricting, legal expense funds, and the payment of civil penalties for violations of the Act. The parties argued that the Commission has, over time, recognized these activities as wholly exempt from the reach of FECA.

As discussed in the Explanation and Justification for the definition of ''donation'' at 300.2(e), the plain language of BCRA, supported by the legislative history, indicates that the ban on national party raising and spending non-Federal funds was intended to be broad, prohibiting a party from raising, receiving, or directing to another person '' a contribution, donation or transfer of funds, or *any other thing of value*'' or spending ''*any funds*'' that are not subject to the Act's limitations, prohibitions, and reporting requirements (emphasis added). Consequently, neither 11 CFR 300.10 nor the definition of ''donation'' in 11 CFR 300.2(e) contains a sweeping exclusion of donations that would permit national parties to raise funds for these purposes under any and all circumstances. See the Explanation and Justification for 11 CFR 300.2(e) (definition of ''donation'').

11 CFR 300.11 Prohibitions on Fundraising for and Donating to Certain Tax-Exempt Organizations

BCRA prohibits national party committees, their officers and agents, and entities directly or indirectly established, financed, maintained, or controlled by them from raising any funds for, or making or directing any donations to, certain tax-exempt organizations. 2 U.S.C. 441i(d). BCRA's prohibition on this type of donor and fundraising activity extends only to tax-exempt organizations with a political purpose or that conduct activities in connection with a Federal election. Specifically, this prohibition extends to organizations exempt from taxation under 26 U.S.C. 501(c) that ''[make] expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity).'' *Id.* (Organizations formed under 26 U.S.C. 501(c) are referred to as ''501(c) organizations'' below.) The ban also extends to political organizations exempt from taxation under 26 U.S.C. 527 (referred to as ''section 527 organizations'' below). These entities are defined in the Internal Revenue Code as parties, committees, associations, funds, or other organizations organized and operated primarily to directly or indirectly accept contributions and make expenditures for the ''exempt function'' of influencing or attempting to influence the selection, nomination, election or appointment of an individual to a Federal, State, or local public office, political organization office, or election of Presidential and Vice Presidential electors. 26 U.S.C. 527(e)(1) and (2). BCRA excludes from the prohibition certain section 527 organizations as discussed below.

The regulations implementing this provision are set forth in new 11 CFR 300.11. A parallel provision of this regulation, 11 CFR 300.50, and others affecting tax-exempt organizations that appear elsewhere in part 300, have been placed together in subpart C for the convenience of those interested in locating rules pertaining to fundraising and donations to tax-exempt organizations.

Section 300.11 as proposed closely tracked the language of BCRA. The final rule has taken into account comments received on questions posed in the NPRM, as discussed below. The Commission also notes that since 11 CFR 300.37 contains a comparable provision applicable to State, district, and local party committees, the discussion below also applies to those entities unless otherwise indicated.

A. General Prohibition

Paragraphs (a)(1) and (2) of the final rules in section 300.11 remain unchanged from the proposed rule except for minor language changes to the description of national congressional campaign committees to conform with other formulations of the phrase.

Paragraph (a)(3) of the final rules implements BCRA's prohibition on national party committee fundraising for, and donating to, a section 527 organization unless the organization is a ''political committee,'' a State or local party committee, or an authorized committee of a State or local candidate. In the context of a parallel provision in 11 CFR 300.37 applicable to State, district, and local party committees, the NPRM asked whether ''political committee'' should mirror the definition of that term in 2 U.S.C. 431(4), which would encompass only organizations that make contributions and expenditures in connection with Federal elections, or whether the term should be interpreted to also encompass State-registered political committees that support only State and local candidates.

As discussed in the Explanation and Justification for 11 CFR 300.37, commenters supported a broader interpretation of ''political committee'' in the context of donations by State and local party committees. None of the commenters addressed this issue in the context of the national party prohibition, however. The Commission concludes that the broad prohibition applicable to national party fundraising and spending in 2 U.S.C. 441i(a) (see 11 CFR 300.10) prevents a broader construction of ''political committee'' in 11 CFR 300.11. Thus, 2 U.S.C. 441i(a) prohibits national party committees from soliciting or directing to another person ''a contribution, donation or transfer of funds or any other thing of value'' or spending any funds that are not subject to the limitations, prohibitions and reporting requirements of the Act. Funds solicited or directed by a national party committee to a State-registered section 527 organization are not subject to the reporting requirements of the Act. Accordingly, in the final rules, paragraph (a)(3)(i) of 11 CFR 300.11 prohibits national party committees from soliciting funds for, or making donations to a section 527 ''political committee'' unless the organization is a ''political committee'' as defined in 11 CFR 100.5.

Paragraph (b) of 11 CFR 300.11, which describes the other persons and entities to whom the prohibition applies, remains unchanged from the proposed rule. The NRPM asked whether the final rule should provide examples of the types of persons and entities covered by this provision, and sought specific examples that might illuminate the scope of this provision. Although many commenters expressed approval for including examples as to who is covered by the provision, none provided specific examples. The final rule does not include specific examples.

The NPRM also sought comments on whether the regulations should contain a temporal requirement so that the prohibition on national and State party fundraising and donations to non-profits is appropriately circumscribed and does not encompass, for example, an organization that made expenditures and disbursements in connection with a Federal election many years ago but has not done so recently and does not plan to do so in the future. After further consideration, the Commission has determined that a temporal requirement is unnecessary because the statutory language, ''makes expenditures and disbursements * * * '' is in the present tense. Thus, the final rules do not contain a temporal requirement. The definition of a 501(c) organization ''that makes expenditures and disbursements in connection with a Federal election'' at 11 CFR 300.2(a) encompasses an organization's activities in the current two-year election cycle only. *See* the

Explanation and Justification of 11 CFR 300.2(a) for further discussion.

One non-profit organization urged the Commission to exclude 501(c)(3) organizations from the party committee fundraising/donation prohibition. This commenter argued that because 501(c)(3) organizations are required by tax law to undertake only election-related activity that cannot benefit any particular candidate or party, they should not be subject to the prohibition. However, the plain language of BCRA applies to all 501(c) organizations that make disbursements or expenditures in connection with Federal elections, including expenditures and disbursements for Federal election activity. Financing certain voter registration and GOTV activities are considered Federal election activities under BCRA and new 11 CFR 100.24. Moreover, even nonpartisan voter registration and GOTV activities are capable of having an impact on Federal elections. Indeed, BCRA's co-sponsors specifically indicated in their comments that nonpartisan voter registration drives or GOTV activities were not intended to be excluded from the definition of Federal election activity. The Commission notes that this provision does not prohibit non-profit organizations from undertaking any type of voter registration or GOTV activities. Because Congress clearly could have excluded 501(c)(3) organizations from this provision but chose not to do so, the final rules do not include any such exclusion or exemption.

B. Safe Harbor Provisions

The NPRM asked whether a safe harbor provision should be provided so that a national or State party committee and others affected by the prohibition may raise funds for or make donations to a section 501(c) or a section 527 organization if they take certain steps to ensure that the organization is not one that falls within the prohibition. The NPRM listed examples of possible safe harbors such as requiring party committees to: (1) Obtain and examine a 501(c) organization's application for tax-exempt status or annual IRS Form 990 returns to determine whether the organization has reported making, or indicates plans to make, expenditures or disbursements in connection with a Federal election, or (2) with respect to current or planned activity, obtain and examine a certification from the organization that indicates it does not make, or plan to make, such expenditures.

The commenters agreed that the regulations should provide a safe harbor for national and State party committees. The commenters split, however, on what the safe harbor should be. The primary sponsors of BCRA and one public interest group suggested that section 501(c) and section 527 organizations be required to file sworn certifications with the Commission, enforceable under 18 U.S.C. 1001, upon which a party committee could rely in determining whether it could solicit funds for, or make or direct donations to, such organizations. The sponsors of BCRA urged that party committees be held strictly liable for any violations of the Act if, in the absence of such a certification, an organization misrepresents itself.

Without addressing the concept of a safe harbor, another public interest group commented that a party committee should be required to obtain a sworn certification from a section 501(c) or a section 527 organization for whom it wishes to solicit or to whom it wishes to donate or direct funds.

Several party committee commenters expressed approval for a safe harbor that would permit a party committee to obtain and rely on applications for tax-exempt status or IRS Form 990 returns to determine whether it could permissibly fundraise for, or donate to, a tax-exempt organization. One commenter suggested that party committees be given a choice between obtaining certifications or relying upon publicly available tax documents. A labor organization argued that the regulations should not require party committees to investigate non-profits it wishes to donate to or assist. Rather, this commenter urged that the Commission adopt specific language that a party committee could use, presumably in a cover letter, when it makes a donation to a 501(c) to serve as a safe harbor ''from prosecution.'' The commenter suggested that the party committee merely be required to state to the section 501(c) organization that any funds it donated cannot be used for activities that would ''constitute an expenditure in a Federal election.''

In considering how to implement these BCRA provisions, the Commission has concluded that a safe harbor is an appropriate way to help ensure that party committees, and others to whom 11 CFR 300.11 and 300.37 apply, comply with the Act. The Commission believes that requiring a 501(c) organization to file a certification with the Commission would be burdensome. However, requiring party committees and others covered by this provision to obtain a written certification from an official with knowledge of an organization's activities is the best way to ensure that the party committee or other person has information as to whether a particular organization engages in certain election-related activities. IRS Form 990s may not clearly show whether an organization has undertaken specific election-related activities. Moreover, these forms do not provide information on current activities. Accordingly, new paragraph (c) of the final rule provides that a party committee may obtain and rely upon a certification from a section 501(c) organization to determine whether it may permissibly raise funds for, or make or direct donations to, the organization.

New paragraph (d) of the final rule sets forth specific criteria a certification must include. These criteria are: (1) That the certification is a signed written statement by an officer or other authorized representative with knowledge of the organization's activities; (2) that the certification states that, within the current two-year election cycle, the organization has not made, and does not intend to make, expenditures or disbursements in connection with an election for Federal office (including for Federal election activity); and (3) that the certification states that the organization does not intend to pay debts incurred from the making of expenditures or disbursements in connection with an election for Federal office (including for Federal election activity) in a prior two-year election cycle. The Commission believes that a requirement that the certification be sworn to is unnecessary and that a certification is sufficiently reliable if it is made in writing by an official of a tax-exempt organization with knowledge of the organization's activities. Moreover, requiring that the certification contain a statement that an organization does not intend to pay Federal-election related debts from a prior cycle will help ensure that the prohibition is not evaded.

New paragraph (e) states that a certification cannot be relied upon if a national party committee, its officers or agents, or others covered by the prohibition has actual knowledge that the certification is false.

Finally, the NPRM sought comments on whether it would be considered ''directing'' a donation if a party committee responded to an unsolicited request for information about organizations that share a party's political, social, or philosophical goals. Commenters who addressed this point stated that sharing such information would be permissible. One party commenter opined that it would be unconstitutional to try to prohibit this sharing of information as well as

difficult to enforce. A public interest group commenter noted that responding to such requests was permissible but would amount to ''directing'' a donation if the donor's request or the party's response was in connection with a proposed ''or potential'' donation.

The Commission agrees that a rule prohibiting this type of information-sharing is not necessary to enforce BCRA and would create significant constitutional concerns. Therefore, new paragraph (f) of the final rules states that it is not prohibited for a national party or its agents to respond to a request for information about a tax-exempt group that shares the party's political or philosophical goals.

11 CFR 300.12 Transition Rules

One of the BCRA amendments to the FECA prohibits national party committees from raising and spending non-Federal funds after November 5, 2002, the effective date of BCRA.[5] 2 U.S.C. 431 note. BCRA, however, created a transition period between November 6, 2002 and December 31, 2002, that permits national party committees to spend non-Federal funds in their accounts as of November 5, 2002, for certain expenses and debts. The rules governing the use of non-Federal funds by national party committees, including national congressional campaign committees, during this transition period are set forth in 11 CFR 300.12.

A. Permissible Uses of Excess Non-Federal Funds During the Transition Period

Paragraph (a) of section 300.12 describes the two permissible uses of funds in a national committee's non-Federal accounts, other than an office building or facility account, as of November 5, 2002. They are: (1) To retire outstanding non-Federal debts or non-Federal obligations incurred solely in connection with an election held before November 6, 2002; or (2) to pay non-Federal expenses or retire outstanding non-Federal debts or obligations incurred solely in connection with any run-off election, recount, or election contest resulting from an election held prior to November 6, 2002. BCRA expressly provides that, subject to the restrictions incorporated into paragraph (b) of 11 CFR 300.12, these non-Federal funds must be used solely for the two enumerated purposes and must be spent before January 1, 2003. 2 U.S.C. 431 note.

[5] The raising and spending of non-Federal funds by State, district, and local committees or organizations are addressed in 11 CFR part 300, subpart B, discussed below.

The NPRM sought comments on whether the use of the word ''solely'' in the enumeration of the permissible uses of non-Federal funds in paragraph (a) during the transition period precluded permitting any funds remaining thereafter to be disgorged to the United States Treasury or donated to a charitable organization. The Commission received several comments on this issue as well as suggestions for other permissible uses under paragraph (a).

The commenters split on whether the Commission should permit remaining non-Federal funds in any non-Federal account to be donated to charity. BCRA's sponsors and one public interest group stated that BCRA provides no statutory basis for transferring any non-Federal funds as of November 6, 2002, to non-profit organizations and doing so could undermine a central purpose of the law which is to prohibit national party non-Federal funds from being used in the 2004 elections. Since charitable organizations under section 170 include section 501(c)(3) organizations, the sponsors pointed out that there is a potential that any donated funds could be used for Federal election purposes in the next election. Section 501(c)(3) organizations are permitted to engage in voter registration, get-out-the-vote activities, and other activities defined as ''Federal election activities'' in BCRA.

The sponsors suggested, instead, that any funds remaining in a national party committee's non-Federal accounts be either disgorged to the United States Treasury or refunded to donors on a *pro rata* basis. Another commenter concurred with this suggestion, pointing out that because the statutory language only permitted specific uses during the transition period, any funds remaining thereafter must be disgorged or refunded.

On the other hand, other commenters believed that permitting donations to at least some charitable organizations was permissible. A public interest group commented that the Commission could require disgorgement or permit donations to charitable organizations as long as the charitable organization is not one that the national parties would be prohibited from donating to under 11 CFR 300.10(b). A commenter from a non-profit organization maintained that BCRA should be construed to permit national parties to use any non-Federal funds remaining after payment of non-Federal election-related debts for any purpose currently permitted under FECA. According to this commenter such a construction is warranted because BCRA is silent as to the disposition of funds during the transition period after permissible debts are paid under paragraph (a) of 11 CFR 300.12, and only specific uses are prohibited in paragraph (b). The commenter further stated that the rules should permit national parties to transfer non-Federal funds remaining after non-Federal debt is paid to 501(c) organizations because these organizations are required to engage in non-partisan charitable or social welfare activity under tax law. None of the party committee commenters addressed this issue.

The final rules address the disposal of excess non-Federal funds in new paragraph (c), discussed below. Other minor changes made to paragraph (a) in the final rules include: the word ''only'' has been changed to ''solely'' to better track the language used in BCRA and a reference to paragraph (e) has been deleted. Changes in the organization of 11 CFR 300.12 are discussed below.

B. Prohibited Uses of Non-Federal Funds After November 5, 2002

BCRA provides that the permissible uses of non-Federal funds enumerated in paragraph (a) are subject to certain restrictions. The final rules at 11 CFR 300.12(b) set forth these restrictions. Specifically, paragraph (b) states that national party committees will no longer be able to use non-Federal funds for any of the following activities after November 5, 2002: (1) To pay any expenditure as defined in 2 U.S.C. 431(9); (2) to retire outstanding debts or obligations that were incurred for any expenditure; or (3) to defray the costs of the construction or purchase of any office building or facility. The final rules track the language in the proposed rules. The Commission did not receive any comments concerning this paragraph, other than those pertaining to building funds, which are discussed below.

C. Disposal of Remaining Non-Federal Funds

New paragraph (c) provides that any non-Federal funds remaining after payment for permissible debts and obligations described in paragraph (a) must be either disgorged to the United States Treasury or returned by check to the donors by December 31, 2002. This approach gives effect to the use of the word ''solely'' in 2 U.S.C. 431 note, and to the legislative intent to prohibit national party non-Federal money from being used in future Federal elections. The Commission did not adopt the suggestion that refunds must be made to contributors on a *pro rata* basis. National party committees have the

option of making these refunds on a last-in, first-out (LIFO) or first-in, first-out (FIFO) basis. Paragraph (c) further provides that all refund checks not cashed by donors by February 28, 2003 must be disgorged to the United States Treasury by March 31, 2003. The latter provision ensures that the national party committees do not make use of any uncashed refund checks. Requiring either disgorgement to the United States Treasury or refunds to donors is consistent with the Commission's practice in enforcement matters when a contributor has made, and a political committee has accepted, funds prohibited under the Act.

D. National Party Committee Office Building or Facility Accounts

BCRA treats non-Federal funds contained in national party building fund accounts more stringently than non-Federal funds in the national party committees' other non-Federal accounts. Under current law, funds in a national party building fund account may be used only for the purchase or construction of the national party committees' office building or facility. Beginning November 6, 2002, however, any funds remaining in a national party building fund account must not be used for the purchase or construction of any office building or facility. *See* 2 U.S.C. 431 note. Consequently, the Commission proposed requiring that funds on deposit in any party office building or facility account be disgorged to the United States Treasury or donated to a organization described in 26 U.S.C. 170(c) no later than December 31, 2002.

As discussed above, although some commenters suggested that national party committees be permitted to donate the remaining non-Federal funds to a charitable organization, other commenters noted that such organizations include organizations exempt under 26 U.S.C. 501(c)(3) which could result in non-Federal funds making their way into future Federal elections since 501(c)(3) organizations may engage in Federal election activity such as voter registration and get-out-the-vote activities. For this reason, the final rule in 11 CFR 300.12(d) follows the approach taken in paragraph (c) for disposal of excess non-Federal funds: Paragraph (d) requires that non-Federal funds remaining in national party building and office facility accounts on November 6, 2002 be disgorged or refunded to donors by December 31, 2002. As in paragraph (c), any refund checks not cashed by donors by February 28, 2003, must be disgorged to the United States Treasury by March 31, 2003.

Additionally, in their comments, the sponsors pointed out that while the proposed rule only prohibited excess building funds from being used to construct or purchase a national party office building, the statutory language prohibits the use of such funds to defray construction or purchase costs for ''any'' office building or facility. *See* 2 U.S.C. 431 note. Paragraph (d) of the final rules also incorporates this change.

E. Application

The final rule at 11 CFR 300.12(e) clarifies that the transition rules apply to officers and agents acting on behalf of a national party committee or a national congressional campaign committee, and to entities that are directly or indirectly established, financed, maintained, or controlled by a national party committee or a national congressional campaign committee. The Commission did not receive any comments relating to this provision. The final rule follows the proposed rule at 300.12(c) except that it has been redesignated as paragraph (e).

F. Allocation and Payment of Expenses During the Transition Period

Section 300.12(f) clarifies that the allocation rules applicable to national party non-Federal and Federal accounts in revised 11 CFR 106.5 remain in effect during the transition period. No comments addressed this provision. The final rules in paragraph (f) are identical to proposed paragraph (d).

11 CFR 300.13 Reporting

BCRA requires national party committees, including national congressional campaign committees, and any subordinate committee of either, to report all receipts and disbursements during regular reporting periods. 2 U.S.C. 434(e). New 11 CFR 300.13(a) tracks the statutory language.

The NPRM sought comment on whether this provision of BCRA was intended to require reporting by existing entities that currently are not required to report and sought the identity of any such entities. The primary sponsors of BCRA commented that the term ''subordinate committee'' was intended to ensure that any new committees created by the national party committees would file required reports for all receipts and disbursements. The sponsors further stated that this provision requires existing entities that are subordinate to the national parties to report all of their receipts and disbursements whether or not they are required to do so under current law. The sponsors and several other public interest group commenters identified the College Democrats and College Republicans as subordinate committees of the national parties. None of the party committee commenters addressed this point.

Although neither BCRA nor FECA contains a definition of a ''subordinate committee'' of a national political party, the phrase is used in 2 U.S.C. 441a(a)(4). That provision states that limitations on contributions do not apply to transfers between and among political committees that are national, State, district, or local committees of the same political party ''including any subordinate committee thereof.'' In Advisory Opinion 1976–112, the Commission concluded that Democrats Abroad was a subordinate committee of the Democratic National Committee for purposes of 2 U.S.C. 441a(a)(4). The advisory opinion noted that the group was ''an organization of American citizens living overseas who support the basic principles of the National Democratic Party,'' had a central office in London, and local clubs in several countries that anticipated reaching political committee status. The Commission concluded that Democrats Abroad functioned as a part of the official structure of the Democratic Party and represented the Democratic Party to Americans living in foreign countries. Factors relied upon in this conclusion included: the group held fundraisers, the proceeds of which were donated to the DNC; the Democratic Party charter authorized a voting delegate from the group to participate at the 1976 party convention; the Call to Convention gave the group three votes to be cast by six delegates elected by group members in accordance with the rules of the party's Compliance Review Commission; the group was allowed representation on the Standing Committee of the Democratic Party; and the group functioned as a party committee by participation in voter registration and GOTV drives for the Democratic Party in 1976. The Commission specifically rejected the conclusion that Democrats Abroad was the equivalent of a State party committee based on the statutory definitions of ''State committee'' and ''State.''

Based on the prior construction of the term in Advisory Opinion 1976–112, the Commission concludes that a ''subordinate committee'' of a national party committee is one that is affiliated with, and participates in, the official party structure of the national party committee. As applied to a particular group, whether an organization is a subordinate committee of a national party is a factual determination. Based on the broad legislative intent to

prohibit national parties from raising and spending non-Federal funds, however, the Commission further concludes that a subordinate committee for purposes of 11 CFR 300.13(a) is an entity that is directly or indirectly established, financed, maintained, or controlled by a national committee of a political party.

Since national party committees and entities directly or indirectly established, financed, maintained, or controlled by them cannot solicit, receive, direct, or spend non-Federal funds as of November 6, 2002, and must dispose of all funds in their non-Federal accounts as of December 31, 2002, 11 CFR 300.13(b) requires national party committees and their subordinate committees to file termination reports for all non-Federal accounts, whether or not a subordinate committee was required to file disclosure reports under FECA prior to BCRA. Paragraph (b) of the final rule also takes into consideration the Commission's determination that excess non-Federal funds must be either refunded to donors or disgorged to the United States Treasury. If a national party committee does not issue refund checks, the national party committee must file a termination report for all non-Federal accounts, including building fund accounts by January 31, 2003. If a national party committee issues refund checks to donors, it must file a termination report covering the period ending March 31, 2003 disclosing the refunds and the disgorgement of any refund checks not cashed by February 28, 2003.

Paragraph (c) of § 300.13 makes clear that the reporting regulations at 11 CFR 104.8 and 104.9 applicable to non-Federal accounts, including building funds, will remain in effect during the transition period. Paragraph (c)(2) provides that reporting requirements at 11 CFR 104.9(c) and (d) covering disbursements from non-Federal account and building fund accounts remain in effect for reports covering the period through March 31, 2003. In contrast, under paragraph (c)(1), the reporting requirements at 11 CFR 104.8(e) and (f), covering receipts of non-Federal and building fund accounts and 11 CFR 104.9(e) covering non-Federal account transfers to State party committees, remain in effect only until December 31, 2002.

Subpart B—State, District, and Local Party Committees and Organizations

11 CFR 300.30 Accounts

Under proposed 11 CFR 300.30 in the NPRM, State, district, and local party organizations would have been required to maintain certain separate Levin accounts in depositories if they paid for the costs of voter registration within a fixed time period or for certain voter identification, GOTV, and generic campaign activity pursuant to 11 CFR 100.24 and 300.32(b)(1). Several of the comments received in response to the NPRM agreed with the proposal that all State, district, and local party committees and organizations be required to maintain separate Levin accounts, no matter the organization's size, level of activity and political committee status, if they desired to undertake certain Federal election activities pursuant to 11 CFR 300.32(b). Other comments raised directly or indirectly the issue of whether the Commission should or even could require such accounts, particularly in light of laws in certain States either limiting the number of non-Federal accounts that a State party organization may hold or, more often, requiring numerous such accounts for varying purposes. It was also argued that the number of non-Federal accounts held by a party committee or party organization is a State, not a Federal issue.

The final rules do not require a separate Levin account. Instead, State, district, and local party organizations that decide to undertake activities pursuant to 11 CFR 300.32(b) may deposit Levin funds in either a separate Levin account or their non-Federal account. If a committee's non-Federal account also functions as its Levin account, it must demonstrate through a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) that it has sufficient Levin funds to cover the non-Federal share of any disbursement it makes for allocable Federal election activity.

The Commission recognizes that some States already require multiple accounts, while a few may prohibit more than one account for all activity. Most importantly, the Commission is very aware of, and concerned about, the complexities of FECA as amended by BCRA, and wants to provide party organizations with procedural flexibility to facilitate compliance with the substantive conditions and restrictions arising from the Levin Amendment.

The NPRM proposed a requirement that, in order for donations to be placed in a Levin account, either the solicitations for the donations must have expressly stated that donations will be subject to the special limitations and prohibitions of section 300.31, or there must have been an express designation to the Levin account by the donors. Several commenters objected to these requirements, arguing that they are not in BCRA and would be unnecessary, inappropriate, and could make it difficult for State, district and local party committees to engage in bona fide Levin activities. The Commission agrees, and the final rules contain no such requirement.

Paragraph (a) provides an overview of the section and specifies that 11 CFR 300.30 applies to any State, district, or local committee or organization of a political party that has receipts or makes disbursements for Federal election activity, whether or not such committee is a political committee under 11 CFR 100.5.

Paragraph (b) describes the requirements for four different types of accounts: Federal accounts, Levin accounts, non-Federal accounts, and allocation accounts. Paragraph (b)(1) provides for the use of non-Federal accounts by State, district, and local party committees, to the extent permitted by State law, and lists the provisions under which non-Federal funds may be used in connection with Federal elections. Paragraph (b)(2) provides for an account solely for Levin funds, and references 11 CFR 300.31 and 300.32(b), which track the statutory requirements for raising Levin funds and disbursing Levin funds, respectively.

Paragraph (b)(3)(i) requires that only contributions permissible under the Act be deposited into a State, district, or local party committee's Federal account, even when such funds may be used in connection with both Federal and non-Federal elections. It also provides a cross-reference to 11 CFR 103.3, which explains the procedure for dealing with impermissible funds. Paragraph (b)(3)(ii) describes the information that must be provided to or received from contributors regarding contributions deposited in a Federal account. Paragraph (b)(3)(iii) requires that only Federal accounts or allocation accounts be used to make disbursements, contributions, or expenditures in connection with Federal elections. This procedure tracks the longstanding requirements at 11 CFR 106.5 for transfers to Federal accounts or to allocation accounts for shared Federal and non-Federal activity.

Paragraph (b)(3)(iv) provides that, when a Federal rather than an allocation account is to be used to make allocable expenditures, the initial payment must be made from the Federal account with timely reimbursements from other accounts involved in a transaction. Paragraph (b)(3)(v) prohibits transfers

into a party committee's Federal account from other accounts of the same party committee or from other party committees or party organizations to pay for Federal election activity, except as permitted by 11 CFR 300.30(b)(3)(iv), 300.33, and 330.34. The language of this paragraph in the NPRM has been changed to better track the requirements of BCRA.

The NPRM requested comments on whether the Commission should continue to permit the use of allocation accounts for purposes of making allocable expenditures. The consensus of those responding to this question was in the affirmative. Therefore, a new paragraph (b)(4) is being added expressly permitting the establishment of such allocation accounts in lieu of making all allocated expenditures from a Federal account and setting out the requirements for the use of such allocation accounts. Paragraphs (b)(4)(i) and (ii) state that only certain funds may be deposited in each allocation account, depending upon whether the purpose of the account is to make expenditures and disbursements that have been allocated between a party committee's Federal and non-Federal accounts or to make expenditures and disbursements that have been allocated between its Federal and Levin accounts. This rule is necessitated by the requirements in BCRA that define the specific funds that can and cannot be used for such activities. Paragraph (b)(4)(iii) requires that, once allocation accounts are established, they must be used for all allocable expenses so long as the accounts are maintained. Pursuant to paragraph (b)(4)(iv) and (v), only the amount needed to meet the allocable share of expenses may be transferred into these allocation accounts and no funds from these accounts may be transferred out to other accounts.

Paragraph (c) provides three different options for paying for Federal election activity. Paragraph (c)(1) requires that one or more Federal account be established, which would need to be used to pay for Federal election activity that is not allocable, as well as to pay the Federal portion of Federal election activity that is allocable. Paragraph (c)(1) also allows Federal funds to be used in non-Federal elections, provided that the contributors of the Federal funds have been informed that their contributions will be subject to the limitations and prohibitions of the Act and provided that the disbursements are reported pursuant to section 300.36. The phrase ''subject to State law'' has been added in response to a comment on the NPRM.

Paragraph (c)(2) provides the option of having at least three separate accounts: one or more Federal, Levin, and non-Federal accounts.

Paragraph (c)(3) provides that if a committee opts not to have a separate Levin account, but instead uses its non-Federal account for depositing and disbursing Levin funds, the committee must demonstrate through a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) that the committee has sufficient Levin funds on hand to cover disbursements for Levin activity.

Paragraph (d) requires all party organizations to keep records and to make them available to the Commission upon request.

11 CFR 300.31 Receipt of Levin Funds

In BCRA, Congress placed several restrictions on how State, district, and local political party committees raise Levin funds. New 11 CFR 300.31 implements these statutory restrictions. Paragraph (a) states as a general proposition a key point in the statute: a State, district, or local political party committee that spends Levin funds must raise those funds solely by itself. 2 U.S.C. 441i(b)(2)(B)(iv).

Paragraphs (b) and (c) of section 300.31 elaborate on the statutory requirement that Levin funds must be raised from donations that comply with the laws of the State in which the State, district, or local party committee is organized. 2 U.S.C. 441i(b)(2)(B)(iii). Paragraph (b) states this as a general requirement. More specifically, paragraph (c) clarifies the status of donations from sources that are permitted under State law, but prohibited by the Act. A prime example is donations from corporations and labor organizations. Under 2 U.S.C. 441b of the Act, ''[i]t is unlawful * * * for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election'' for Federal office. 2 U.S.C. 441b(a). Under the campaign finance laws of several States, however, donations by corporations or labor organizations to political party committees are legal. Section 300.31(c) clarifies that in such States, a political party committee may solicit and accept donations of Levin funds from corporations and labor organizations, subject to the other conditions of the Act. (Of course, if donations from corporations or labor organizations to a political party committee are illegal in a State, political party committees in that State would not be able to accept Levin fund donations from those sources.)

Three commenters expressed concern that section 300.31(c), as published in the NPRM, could be misinterpreted to allow donations from foreign nationals. One of these commenters suggested adding the phrase, ''other than 2 U.S.C. 441e,'' after the word ''chapter.'' Although the sweeping nature of the 2 U.S.C. 441e as amended by BCRA seems to preclude the possibility that a donation by a foreign national to a party committee could be lawful under any State law, the Commission has revised paragraph (c) of section 300.31 as suggested.

The principal Congressional sponsors commented that paragraph (c) should not be misinterpreted to allow a donation of Levin funds to a State, district, or local political party committee from a person established, financed, maintained, or controlled by a person forbidden from providing Levin funds to the committee. The Commission has addressed this concern in paragraphs (e) and (f) of section 300.31. (*See* discussion below.)

Paragraph (d), in general, addresses amount limitations on donations of Levin funds to a State, district, or local party committee. In the Levin Amendment, Congress placed a $10,000 per calendar year per donor limitation on donations to a State, district, and local political party committee to be used as Levin funds. This statutory amount limitation applies to a person, including ''any person established, financed, maintained, or controlled by such person.'' 2 U.S.C. 441i(b)(2)(B)(iii). Paragraph (d)(1) clarifies that this is an aggregate limit per recipient committee (i.e., the aggregate limit applies separately to each party committee) and, therefore, a person may contribute to an unlimited number of State, district, and local committees of a political party. *See* discussion of 11 CFR 300.31(d)(3), below. Paragraph (d)(1) did not draw comment. In the NPRM, the Commission sought comment on whether its current ''affiliation'' regulation (11 CFR 100.5(g)) would appropriately determine whether a person is ''established, financed, maintained, or controlled,'' within the meaning of this paragraph. The Commission received no comments on this point. The Commission, in this rulemaking, is adopting 11 CFR 300.2(c), which is based on 11 CFR 100.5(g), which should be applied to determine whether certain persons share a $10,000 per year per committee contribution amount limitation under paragraph (d)(1).

Paragraph (d)(2) addresses those cases in which State law imposes an amount limitation on donations to a State, district, or local party committee that differs from the amount limitation in 2 U.S.C. 441i(b)(2)(B)(iii) and paragraph (d)(1). Paragraph (d)(2) strikes a balance between respect for State law and protecting the integrity of the Levin Amendment amount limitation. It makes clear that lower State law amount limitations prevail over the $10,000 limitation in the Levin Amendment, but that the Levin Amendment $10,000 limit controls where State law amount limitations exceed $10,000. There were no public comments on paragraph (d)(2).

Paragraph (d)(3) of section 300.31 addresses the question of whether State, district, and local committees of the same political party are affiliated for purposes of applying the donation amount limitation as set forth in paragraphs (d)(1) and (d)(2) of section 300.31. *See generally* 11 CFR 110.3. The paragraph clarifies that such committees are not considered affiliated only for the purpose of determining compliance with paragraph (d)(1). *See* 148 Cong. Rec. H410 (daily ed. Feb. 13, 2002) (statement of Rep. Shays).

The last sentence of paragraph (d)(3) is intended to make clear that there is no limit to the number of State, district, and local committees to which a person may donate Levin funds. The phrase ''individually or together with'' in paragraph (d)(3) is intended to clarify that the amount limitations in paragraphs (d)(1) and (d)(2) apply collectively to the amounts donated to a particular party committee by a person and by any entities established, financed, maintained, or controlled by such person.

Three commenters discussed paragraph (d)(3). A national party committee supported the provision. Another commenter suggested that there should be a ''rebuttable presumption'' of affiliation of party organizations ''at the same political or geographic unit'' in order to prevent a possible proliferation of party organizations each with its own $10,000 per donor limit. The legislative history indicates, however, that Congress contemplated the possibility of such a proliferation of party committees and chose to address it by imposing a ban on transfers of Levin funds between party committees rather than by affiliating the committees under a single contribution limit. 148 Cong. Rec. H410 (daily ed. Feb. 13, 2002) (statement of Rep. Shays); *see* 2 U.S.C. 441i(b)(2)(B)(iv). Therefore, the Commission has not adopted this suggestion.

As mentioned above in the discussion of paragraph (a) of section 300.31, a key point made in the statute is that expenditures and disbursements of Levin funds by a State, district, or local political party committees must be ''made solely from funds raised by the * * * committee which makes such expenditure or disbursement * * *.'' 2 U.S.C. 441i(b)(2)(B)(iv). Congress elaborated on this fundamental requirement by specifically providing that Levin funds must not be ''solicited, received, directed, transferred, or spent by or in the name of'' a national committee of a political party, including a national Congressional campaign committee, or a Federal candidate or individual holding Federal office. 2 U.S.C. 441i(b)(2)(C)(i). This statutory prohibition extends to an agent acting on behalf of a national party committee or a candidate or Federal officeholder, and to any entity that is directly or indirectly established, financed, maintained, or controlled by a national party committee or a candidate or Federal officeholder. 2 U.S.C. 441i(a)(2), and (e)(1); *see* 2 U.S.C. 441i(b)(2)(C).

Paragraph (e) of section 300.31 implements these specific statutory restrictions. Paragraph (e)(1) provides that a State, district, or local political party committee must not ''accept or use'' as Levin funds any funds ''solicited, received, directed, transferred or spent'' by a national committee of a political party, including a national Congressional campaign committee. Paragraph (e)(2) extends the same prohibition to funds ''solicited, received, directed, transferred or spent'' by a Federal candidate or officeholder. Two commenters pointed out that paragraphs (e)(1) and (e)(2), as published in the NPRM, did not consistently or expressly refer to agents of, or to entities directly or indirectly established, financed, maintained, or controlled by, national party committees and Federal candidates and officeholders. The prohibition in paragraph (e)(1) has been revised in the final regulation to extend explicitly to agents of, and to entities directly or indirectly established, financed, maintained, or controlled by, national party committees and by Federal candidates and officeholders. Similarly, paragraph (e)(2) has been revised to refer expressly to agents of Federal candidates and officeholders.

Confusion could arise about the relationship of the Commission's long standing joint fundraising regulation, 11 CFR 102.17, and the restrictions imposed in paragraphs (e)(1) and (e)(2) of section 300.31. Therefore, both paragraphs (e)(1) and (e)(2) explicitly provide that 11 CFR 102.17 does not permit joint fundraising of Levin funds by a State, district, or local political party committee, and a national party committee or a Federal candidate or officeholder. Paragraph (e)(1) also clarifies that a State, district, or local political party committee may jointly raise, under 11 CFR 102.17, Federal funds not to be used for Federal election activity.

Congress specifically addressed other joint fundraising of Levin funds by providing that a State, district, or local political party committee must not use as Levin funds any amounts ''solicited, received, or directed through fundraising activities conducted jointly by two or more State, local, or district committees of any political party or their agents.'' 2 U.S.C. 441i(b)(2)(C)(ii). This prohibition extends across State lines. *Ibid.* New paragraph (f) implements this statutory prohibition against joint fundraising of Levin funds by more than one State, district, or local committee of a political party, including such parties from more than one State. Paragraph (f) also clarifies that nothing in BCRA forbids two or more State, district, or local political party committees from jointly raising Federal funds that are not to be used for Federal election activity.

The provisions of paragraphs (e)(1), (e)(2), and (f) of section 300.31 regarding joint fundraising drew several comments. A national party committee suggested that the Commission clarify that these joint fundraising prohibitions extend only to Levin funds. In response, the Commission emphasizes that the section heading and the language in the introduction to paragraph (e) explicitly limit the scope of these provisions to ''Levin funds.'' Similarly, the Commission emphasizes that paragraph (f) explicitly refers to ''Levin funds.''

One commenter approved of the scope of joint fundraising provisions of paragraphs (e)(1), (e)(2), and (f), stating that the joint fundraising prohibition should extend beyond particular ''events'' to all fundraising activities for Levin funds that are conducted jointly. Conversely, three commenters, a national party committee, a State party committee, and an association of State party officials, urged the Commission to limit the reach of the joint fundraising prohibition in paragraphs (e)(1), (e)(2), and (f) to ''specific joint fundraising events,'' in contrast to joint fundraising ''activities.'' They urge that such joint fundraising ''activities'' for Levin funds should be permitted. In support, they quote Rep. Shays, who said, ''joint fundraisers between state committees or state and local committees are not

permitted * * * The joint fundraising prohibition will prevent a single fundraiser for multiple state and local party committees.'' 148 Cong. Rec. H410 (daily ed. Feb. 13, 2002). These commenters apparently have focused upon Rep. Shays' use of the term ''single fundraiser,'' which they seem to interpret to mean a dinner, a speech, or similar ''event.'' Presumably, a fundraising ''activity,'' such as a direct mail campaign, would be permitted under the commenters' suggested interpretation. In response, the Commission notes that statements by any member of Congress during the floor debate should not be used to contradict the plain language of the statute. BCRA itself broadly refers to ''fundraising *activities* conducted jointly'' by State, district, or local political party committees. 2 U.S.C. 441i(b)(2)(C)(ii) (emphasis added). In addition, the specific statement made by Rep. Shays, referring to a ''single fundraiser,'' could easily encompass either a dinner or a specific direct mail campaign.

In the final rules, the Commission has added as a separate paragraph (g) a rule stated in the NPRM as the final sentence of paragraph (f). Paragraph (g), under the heading ''Safe harbor,'' provides that the use of a common vendor by more than one State, district, or local political party committees does not constitute joint fundraising within the meaning of section 300.31. In the version of the regulation published in the NPRM (then in paragraph (f)), the rule would have provided that the use of a common vendor would not, by itself, be deemed joint fundraising. The Commission revised this language in order to provide a ''bright-line'' rule. The principal Congressional sponsors of BCRA, responding to the NPRM, agreed with this provision in principle, but noted that use of a common vendor may, in some circumstances, be a means of carrying out actual 'joint fundraising' schemes. The sponsors urged the Commission to be ''highly attentive'' to this practice.

11 CFR 300.32 Expenditures and Disbursements

11 CFR part 300, subpart B, generally addresses expenditures and disbursements of Federal funds and of Levin funds for Federal election activities. 11 CFR 300.32 specifically addresses both kinds of spending by a State, district, or local political party committee, and clarifies that BCRA does not affect spending of non-Federal funds for purely State or local activity. 11 CFR 300.32 also implements part of 2 U.S.C. 441i(b)(1), which requires that an association or similar group of candidates for State or local office, or an association of State or local officeholders, must make expenditures or disbursements for Federal election activity solely with Federal funds.

In the NPRM, the Commission solicited comments about the term, ''association or similar group of candidates for State or local office, or an association of State or local officeholders,'' specifically asking whether it should be further defined in the regulations, and if so, about examples of such associations or groups to include in the final regulations. The Commission received no comments on this point, nor did the Commission receive any other comments about paragraph (a)(1).

Paragraph (a)(1) requires that an association or similar group of candidates for State or local office, or an association of State or local officeholders, must make expenditures or disbursements for Federal election activity solely with Federal funds. Paragraph (a)(2) makes clear that the general rule in BCRA is that a State, district, or local political party committee spending on Federal election activity must use Federal funds for that spending, except as provided in 2 U.S.C. 441i(b)(1). The Commission received no comments regarding this provision.

Paragraphs (a)(3) and (a)(4) address how State, district, or local party committees must pay the costs of raising funds used to pay for Federal election activities. In BCRA, Congress required that spending by a State, district, or local committee of a political party ''to raise funds that are used, in whole or in part, for expenditures and disbursements for a Federal election activity shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.'' 2 U.S.C. 441i(c). As published in the NPRM, paragraphs (a)(3) and (a)(4) sought to implement section 441i(c) as it applied to Federal funds raised for Federal election activity and Levin funds raised for Federal election activity, respectively.

In the NPRM, the Commission sought comment about section 441i(c) with regard to Levin funds. In particular, the Commission sought comment on (1) whether proposed paragraph (a)(4) could be limited to the direct costs (see pre-BCRA 11 CFR 106.5(a)(2)(ii)) of raising Levin funds; and (2) whether the costs of fundraising for Levin funds could be allocated between a party committee's Federal and non-Federal accounts under the ''funds received'' method. *See* pre-BCRA 11 CFR 106.5(f). Comments were also sought as to whether, generally, greater specificity should be provided in proposed section 300.32 as to the nature of fundraising costs in this section. 67 FR 35664.

The Commission received several comments about paragraphs (a)(3) and (a)(4). The principal Congressional sponsors of BCRA and a public interest group suggested that both paragraphs (a)(3) and (a)(4) should be clarified by including the statutory language, ''in whole or in part.'' The Commission has included this suggestion in the final regulation. The added language better conforms the scope of the regulation to the scope of the statute.

Another commenter suggested that both paragraphs (a)(3) and (a)(4) should be limited to the direct costs of raising funds to be spent for Federal election activity, in contrast to the regulation proposed in the NPRM, which would have covered all costs of fundraising. The Commission has included this suggestion in the final rules. The purposes of 2 U.S.C. 441i(c) are adequately served by regulating only the direct costs of raising funds for Federal election activity. This limitation also avoids unnecessary confusion about allocation of administrative costs in the fundraising context in that covering the direct costs of fundraising is consistent with the Commission's longstanding regulation of fundraising costs. Given this change in the final regulation, the Commission has imported language from its pre-BCRA allocation regulation describing what constitutes direct costs.

A public interest group supported paragraph (a)(4) of the NPRM, while a State party committee objected to paragraph (a)(4) to the extent that it forbids a State, district, or local political party committee from spending Levin funds to raise Levin funds. This commenter suggests that Levin funds are subject to the limitations, prohibition, and reporting requirements of the Act, as specified in 2 U.S.C. 441i(c).

The Commission notes that 2 U.S.C. 441i(b)(2)(A), which addresses the use of Levin funds for certain Federal election activity, refers to ''amounts which are not subject to the limitations, prohibitions, and reporting requirements of this Act (other than any requirements of this subsection).'' Although that statutory phrase is somewhat incomplete, in that it omits any reference to the reporting requirements for Levin activity that are found in a different section of the Act (2 U.S.C. 434(e)), it is nonetheless a recognition that Levin funds are subject to requirements of the Act.

Yet even without this phrase, the Commission would find that Levin

funds are subject to the limitations and prohibitions found in the Act at 2 U.S.C. 441i(b)(2), and the reporting requirements found in the Act at 2 U.S.C. 434(e)(2)(A). The Commission notes that 2 U.S.C. 441i(b)(2)(B) places a $10,000 limit on Levin funds donated to any one State, district, or local committee of a political party, which is greater than the amount limitation for contributors to authorized committees under 2 U.S.C. 441a(a)(1)(A), but less than the amount limitation for contributors to national committees under 2 U.S.C. 441a(a)(1)(B). The Commission finds that even though there are different amount limitations that apply to different contexts in the Act, that does not cause any of those limitations to not be limitations ''of the Act.'' Similarly, 2 U.S.C. 441i(b)(2)(B) and 441i(b)(2)(C)—which, among other things, prohibit the use of Levin funds for activity that refers to a Federal candidate and prohibit the receipt of Levin funds raised by other party committees—contain different prohibitions than other sections of the Act (*see,* e.g., 2 U.S.C. 441b), but are prohibitions ''of the Act'' nonetheless. And finally, reporting requirements under the Act can vary depending on the amount and nature of the receipt or disbursement, as well as on the nature of the entity that is receiving and disbursing the amount at issue. *See* 2 U.S.C. 434. The same variables apply to the reporting requirements for funds raised and disbursed for Federal election activity. *See* 2 U.S.C. 434(e). In light of the statutory limitations, prohibitions and reporting requirements to which Levin funds are subject, the Commission concludes that State, district, and local party committees or organizations may spend Levin funds to raise Levin funds.

Paragraph (b) of section 300.32 lists the types of activities for which a State, district, or local political party committee may spend Levin funds. Paragraph (b)(1) spells out the two kinds of Federal election activity for which Levin funds may be spent, *see* 2 U.S.C. 441i(b)(2)(A), and provides that such spending must be made subject to the conditions set out in paragraph (c) of section 300.32. The principal Congressional sponsors of BCRA suggested that the word ''only'' be included to preclude any possible misinterpretation of the provision. The Commission has adopted this suggestion in the final regulation.

Paragraph (b)(2) of section 300.32, as proposed in the NPRM, drew several comments. A national party committee and a State party committee supported the provision. The principal Congressional sponsors of BCRA and a public interest group expressed concern that paragraph (b)(2) could be misinterpreted to allow spending of Levin funds for the Federal election activities described in 2 U.S.C. 431(20)(A)(iii) and (iv). In response to this concern, the Commission has added the language, ''other than the Federal election activities defined in 11 CFR 100.24(b)(3) and (4),'' which implement section 431(20)(A)(iii) and (iv).

As published in the NPRM, paragraph (b)(2) of section 300.32 would have allowed a State, district, or local political party committee to spend Levin funds for any purposes allowed by State law, and would have also provided that such spending was not subject to paragraph (c) (*see* below). The principal Congressional sponsors of BCRA expressed concern that the latter provision could be misinterpreted to allow fundraising and unallocated spending of Levin funds otherwise forbidden in other regulations. The Commission agrees. Therefore, the final rule, paragraph (b)(2), exempts spending of Levin funds for purposes permissible under State law from only paragraphs (c)(1) and (c)(2) of section 300.32 because those two paragraphs are specifically focused on spending for Federal election activities. As revised, the final rule subjects all spending of Levin funds to paragraphs (c)(3) and (c)(4). The heading for paragraph (c) has been changed slightly in the final rule to conform with this change.

While the Levin Amendment permits the spending of Levin funds for the purposes set out in paragraphs (b)(1) and (2), it places restrictions and conditions on that spending when it is for Federal election activity. Paragraph (c) sets out in one place important restrictions and conditions that are stated in different sections of BCRA. Paragraph (c)(1) implements the restriction that the Federal election activity paid for partly with Levin funds must not refer to a clearly identified Federal candidate. *See* 2 U.S.C. 441i(b)(2)(B)(i). Paragraph (c)(2) implements the restriction that the Federal election activity paid for partly with Levin funds must not be for any broadcast, cable, or satellite communications, other than a communication that refers solely to a clearly identified candidate for State or local office. *See* 2 U.S.C. 441i(b)(2)(B)(ii). Paragraph (c)(3) ties together the provisions of this regulation with 11 CFR 300.31, which covers the raising of Levin funds. Paragraph (c)(4) requires allocable Federal election activity (i.e., voter registration, voter identification, GOTV, or generic campaign activity that does not refer to a clearly identified Federal candidate and is not a broadcast, cable, or satellite communication) that exceeds in the aggregate $5,000 in a calendar year to be paid for either entirely with Federal funds, or with a combination of Federal funds and Levin funds pursuant to the allocation percentages set forth in 11 CFR 300.33. Disbursements that aggregate $5,000 or less in a calendar year for this restricted category of Federal election activity may be paid for entirely with Federal funds, entirely with Levin funds, or pursuant to the allocation percentages set forth in 11 CFR 300.33.

In implementing 2 U.S.C. 441i(b)(2)(A), the Commission chose to permit a greater amount of Levin funds to be used when disbursements for allocable Federal election activity do not exceed in the aggregate $5,000 in a calendar year for several reasons. First, the Commission notes that the reporting requirements for Federal election activity contain an exception for activity below $5,000 in the aggregate in a calendar year. *See* 2 U.S.C. 434(e)(2)(A). While that exception applies to aggregate receipts and disbursements, rather than just aggregate disbursements, it does suggest that Congress did not take a rigid approach to low levels of Federal election activity. Second, the Commission is particularly sensitive to the nature of the Federal election activity to which this provision applies: Grassroots activities for which references to Federal candidates are prohibited. There is a far weaker nexus between Federal candidates and this category of Federal election activity than other types of Federal election activity for which Levin funds are prohibited. Finally, the Commission notes that $5,000 is only half of what any single donor may donate (subject to State law) to each and every State, district, and local party committee under 2 U.S.C. 441i(b)(2), so there is no danger that allowing a committee to use entirely Levin funds for allocable Federal election activity that aggregates $5,000 or less in a calendar year will somehow lead to circumvention of the amount limitations set forth in 2 U.S.C. 441i(b)(2). The distinction in paragraph (c)(4) between allocable Federal election activity below $5,000 and allocable Federal election activity above $5,000 reflects these considerations.

Paragraph (d) serves as a clarifying reminder that spending of non-Federal funds by a State, district, or local political party committee for State or local political activity, including the raising of non-Federal funds, remains a matter of State law. In response to

several comments, the Commission is making two minor clarifications to this paragraph in the final rules. First, the paragraph heading has been changed to refer to ''activities,'' rather than ''funds,'' as it read in the NPRM, to be more descriptive of the actual subject of the paragraph. Second, the first sentence of the paragraph now refers to spending ''Federal, *Levin*, or non-Federal'' funds to conform this paragraph with paragraph (b)(2) of section 300.32.

11 CFR 300.33 Allocation of Costs of Federal Election Activity

The final regulations in this section address only the allocations of expenditures and disbursements by State, district, and local party committees for Federal election activity, pursuant to the requirements of BCRA. The requirements for allocations by these committees of other categories of expenditures and disbursements that are not Federal election activity are to be found at 11 CFR 106.7. This division of rules represents an attempt to clarify how different categories of activities are addressed with regard to allocation, depending upon their nature, timing and, in certain instances, the presence or absence of a Federal candidate on the ballot, i.e., whether they come or do not come within the definition of ''Federal election activity'' at 11 CFR 100.24. Provisions at proposed 11 CFR 300.33 that addressed activities not within the definition of Federal election activity now appear in new 11 CFR 106.7. *See also* the Explanation and Justification for 11 CFR 106.7.

Section 441i(b)(1) of Title 2, United States Code, states that State, district, and local party committees must make all disbursements and expenditures for Federal election activity with Federal funds, with one exception. This requirement holds even when the expenses involved are also related to activities in connection with non-Federal elections. The exception to the required use of Federal funds in connection with Federal election activity involves certain activities to be paid in part with Levin funds, pursuant to 2 U.S.C. 441i(b)(2).

Section 441i(b)(2)(A) permits State, district, and local party committees, under certain conditions, to use Levin funds from a Levin or non-Federal account for particular categories of activity, including voter registration, voter identification, get-out-the-vote (''GOTV''), and generic campaign activities during the time periods when they constitute Federal election activity. These funds must have been received by a party committee pursuant to specific limitations, and are to be used to meet expenses related to voter registration activity that takes place within 120 days of a Federal election and/or expenses related to voter identification, GOTV activities, and generic campaign activities that are conducted when a Federal candidate appears on the ballot. Such activities must not refer to a clearly identified candidate for Federal office. Section 441i(b)(2)(A) permits the use of Levin funds for these purposes ''to the extent that'' the costs of the activities are allocated. Levin funds may also be used for non-Federal purposes permissible under State law. *See* 11 CFR 300.32(b)(2).

Paragraphs 300.33(a)(1) and (2) of the proposed regulations, which addressed the costs of salaries and wages paid to employees who spend less than 25% of their time in connection with Federal elections and of other administrative costs, are being replaced by new 11 CFR 106.7(c)(1) and (d)(1) for the reasons explained in the Explanation and Justification for that section.

In the final rules, 11 CFR 300.33(a) addresses costs that may be allocated between Federal and Levin funds. Paragraphs (a)(1) and (a)(2) represent a division of the proposed rule into two parts, the first addressing voter registration within 120 days of the date of an election and the second the costs of voter identification, GOTV, and generic campaign activities occurring during time periods when they constitute Federal election activity. The relevant time periods for the latter categories of activity are set out at 11 CFR 100.24(a)(1). Both paragraphs (a)(1) and (a)(2) are subject to 11 CFR 300.32(c), which permits committees to fund these activities entirely with Levin funds only when the disbursements for the activities do not exceed $5,000 in the aggregate in a calendar year.

Paragraph (b) of section 300.33 sets out fixed minimum amounts of Federal funds to be required for the Federal portions of costs of the specified activities for which allocation between Federal and Levin funds is permissible. One goal of the allocation rules is to assure that activities deemed allocable are not paid for with a disproportionate amount of Levin funds. Another goal is to simplify the allocation process, in particular by establishing formulas that do not vary from State to State and that do not require measurements of time or space. Therefore, in lieu of the State-by-State ballot composition ratios for generic campaign activity and in lieu of the time or space method applied to exempt State party activities in the pre-BCRA regulations, the rules establish a fixed formula for all States that would vary only in terms of whether or not a Presidential campaign and/or a Senate campaign is to be held in a particular election year.

In the NPRM, the Commission set out allocation percentages for the Federal shares of the allocable Federal election activities described in paragraph (a). The final rules at 11 CFR 300.33(b)(1) through (4) use the same minimum Federal percentages. Thus, State, district, and local party committees and organizations must allocate no less than the following amounts to their Federal accounts:

(i) Presidential only election year—28% of costs

(ii) Presidential and Senate election year—36% of costs

(iii) Senate only election year—21% of costs

(iv) Non-Presidential and Non-Senate election year—15% of costs.

As with the percentages used in 11 CFR 106.7 for the allocation of activities that are not Federal election activities, the percentages for those allocable Federal election activities that may be paid for in part with Levin funds were derived by taking averages of the ballot composition-based allocation percentages reported by State party committees in four groupings of States selected for their diversities of size and geographic location and for the particular elections held in each State in 2000 and 2002. The groupings were: (1) Six States (Alabama, Colorado, Illinois, New Hampshire, Oklahoma, and Oregon) in which there was a Presidential but no Senate campaign in 2000; (2) ten States (California, Delaware, Georgia, Florida, Michigan, New York, North Dakota, Texas, Vermont, and Wyoming) in which there were both a Presidential campaign and a Senate campaign in 2000; (3) six States (Delaware, Georgia, Michigan, Oklahoma, Texas, and Wyoming) in which there will be a Senate campaign in 2002; and (4) six States (California, Florida, New York, North Dakota, Vermont, and Washington) in which there will be no Senate campaign in 2002.

In 2000, the Federal percentages for the two parties in six States with only a Presidential campaign ranged from 20% to 33.33%, with an average of 28%, while the Federal percentages for the two parties in the ten States that held both Presidential and Senate campaigns that year ranged from 30% to 43%, with an average of 36%. In 2002, the Federal percentages for the two parties in six States with a Senate campaign ranged from 20% to 25%, with an average of 21%, while the Federal percentages for the two parties in six States with no Senate campaign ranged from 11.11% to

16.67%, with an average of 15%. The rules apply the average percentages in each of the four groupings of States to all 50 States.

As discussed in the Explanation and Justification for 11 CFR 106.7, one comment on the NPRM from a public interest organization addressed the Commission's proposed fixed percentages by providing two alternatives to the Commission's figures. The first alternative would have set a flat 33% requirement for Federal shares of what the response termed ''Levin expenditures'' and for allocable costs other than administrative costs in odd-numbered years or in non-Presidential election years, and a flat 40% requirement for Federal shares of these same categories of activities in Presidential election years. The commenter based these percentages on what was termed ''the current assumption'' as to what State party committees spend in certain years.

The second alternative posed by the same commenter adopted the Commission's calculations, but called for the use of the higher percentages in the sample States for what the response termed ''Levin spending'' and for voter registration outside the 120 day period before an election, plus the average percentages for certain non-Levin expenses. The commenter also urged the Commission to apply the allocation percentages to a two-year election cycle, not just to the year of a Federal election.

The comment submitted on behalf of the principal Congressional sponsors of BCRA with regard to fixed allocation percentages was very similar to that of the public interest organization's response cited above in that, as one alternative approach, it called for at least a 33% Federal allocation of what it termed ''Levin activities'' and of voter registration activities outside the 120 day period before an election. It also called for 40% Federal allocations of Levin activities and of voter registration activities that are not Federal election activities in Presidential election years. This alternative urged the application of the percentages to two-year Federal election cycles. As a second alternative, this commenter also agreed to use of the Commission's percentages for administrative costs in a two year cycle, but urged the application over that cycle of the highest, not the average, Federal percentages for what it termed ''Levin activities'' and voter registration activities that are not 'Federal election activity'. * * *'' Another comment from a public interest organization also called for use of the highest percentages in the identified States, not the average percentages.

Comments on the NPRM received from party committees with regard to fixed percentages for Federal allocations ranged from support for the Commission's position to giving party committees a choice at the beginning of each cycle between the proposed formula and ballot composition ratios.

The final rules at paragraph 300.33(b) retain the fixed percentage approach to allocation proposed in the NRPM and adopt the percentages proposed in the NPRM to disbursements for Federal election activities. As discussed above, disbursements for salaries and wages, and allocations of administrative costs, are addressed at 11 CFR 106.7. The final rules at 11 CFR 300.33(b) also contain additional language to clarify that the allocation percentages must be used for activities that occur within the time periods described in 11 CFR 100.24, time periods that establish when specific activities are to be treated as ''Federal election activity'' under BCRA. The time periods differ between voter registration on the one hand and voter identification, GOTV, and generic campaign activities on the other. *See* 11 CFR 100.24(a) and (b). As explained in the Explanation and Justification for 11 CFR 100.24, the complete two-year cycle approach urged by some commenters has not been adopted for Federal election activities.

With regard to the amounts of the fixed minimum Federal allocations, the Commission has retained the percentages contained in the NPRM because they represent averages of actual allocation ratios used in specific States at specific times, not assumptions of State, district, and local party behavior. The Explanation and Justification for 11 CFR 106.7 explains the basis for this approach in greater detail.

Paragraphs (c)(1) and (2) of section 300.33 set out the categories of Federal election activity costs that must not be allocated between Federal funds and Levin funds. These categories include: (1) The costs of public communications as defined at 11 CFR 100.26, which must be paid with all Federal funds, and (2) the costs of salaries and wages for employees who spend more than 25% of their compensated time in a month on activities in connection with a Federal election, which must also be paid entirely with Federal funds. The costs of salaries and wages for employees that spend 25% or less of their compensated time in a month on activities in connection with a Federal election must be paid entirely with non-Federal funds that comply with State law. *See* 11 CFR 106.7(c)(1). This approach to salaries and wages is explained more fully in the Explanation and Justification for 11 CFR 106.7.

Section 300.33(c)(3) requires that the *direct* costs of raising funds for Federal election activities be paid solely from the party committee's Federal funds, pursuant to 2 U.S.C. 441i(e), or with Levin funds. The Explanation and Justification for 11 CFR 106.7 and 300.32 explain the reasons for this approach. The proposed rules had indicated that non-Federal funds could be used in certain limited fundraising situations involving non-Federal activity. This language has been deleted from the final rules for the reasons explained in the accompanying Explanation and Justification for 11 CFR 106.7.

Paragraph 300.33(d) addresses transfers of Levin funds from a State, district, or local party committee's Levin account or from its non-Federal account to its Federal account or to an allocation account to meet the Levin fund portion of the costs of allocable expenditures made pursuant to 2 U.S.C. 441i(b)(2). The final rule largely tracks pre-BCRA 11 CFR 106.5(g) by requiring that reimbursements from a Levin account or from a non-Federal account to a Federal account or to an allocation account take place within a specified number of days. New paragraph (d), like former 11 CFR 106.5(g)(2)(B)(iii), states that any payment outside this time frame, absent the need for an advance payment of a reasonably estimated amount, could result, depending upon the circumstances, in a loan to the Federal account and a violation of the Act. No commenters addressed this provision.

11 CFR 300.34 Transfers

As explained above, the Levin Amendment permits spending on certain Federal election activities subject to restrictions and conditions, one of which is that the spending must be allocated between Levin funds and Federal funds. 2 U.S.C. 441i(b)(2)(A)(i), (ii). A State, district, or local committee must raise by itself all money spent under the Levin Amendment. 2 U.S.C. 441i(b)(2)(B)(iv). Congress expressly stated that a State, district, or local committee must not use as Levin funds ''any funds provided to such committee'' by certain enumerated entities. These entities are: any other State, district, or local committee; any national political party committee; any agent of a political party committee; and any entity directly or indirectly established, financed, maintained, or controlled by a political party committee. 2 U.S.C. 441i(b)(2)(B)(iv)(I) through (IV). By the plain language of these provisions, these restrictions

extend to the Federal funds component of the disbursement allocated between Levin funds and Federal funds. *See* 148 Cong. Rec. H410 (daily ed. February 13, 2002) (Rep. Shays).

This provision of the Levin Amendment could cause confusion given the pre-existing rule that party committees of the same political party may transfer Federal funds among themselves without limit on amount. *See* 11 CFR 102.6(a)(1)(ii).[6] Paragraph (a) of section 300.34 makes clear that 11 CFR 102.6(a)(1)(ii) does not override the Levin Amendment as to transfers of Federal funds. Specifically, the committee must not use such transferred Federal funds to pay the Federal portion of Federal election activity. A State party committee and an association of State party officials commented that this provision about transferred Federal funds should apply only to transferred Federal funds ''earmarked'' for spending under the Levin Amendment by the transferring committee. The Commission has not adopted this suggestion in the final rules. Congress, at 2 U.S.C. 441i(b)(2)(B)(iv), specifically bars a State, district, or local committee spending Federal funds (and Levin funds) for Federal election activity from using transferred funds. How a transferring committee may or may not characterize the transfer is irrelevant to this prohibition.

In response to the NPRM, a public interest group noted that a State, district, or local political party committee's Federal account may commingle Federal funds raised by the committee itself, which are eligible for spending for Federal election activities, and transferred Federal funds, which are not so eligible. This commenter suggested that the Commission should require party committees to use ''a reasonable and industry-accepted accounting method'' to ensure that they have sufficient self-raised, non-transferred Federal funds to cover expenditures for Federal election activities as the expenditures are made. The Commission has responded to this suggestion in the final rules. Paragraph (a) of section 300.34 is organized into two paragraphs. Paragraph (a)(1) contains the language published in the NPRM, without change. Paragraph (a)(2) provides that a State, district, or local political party committee must demonstrate through a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) that its Federal account has sufficient Federal funds raised by the committee itself to make a given disbursement of Federal funds for Federal election activity. Paragraph (a)(2) alternatively permits, but does not require, a State, district, or local political party committee to establish a separate Federal account to use for spending on Federal election activities, and into which it deposits only Federal funds it has raised by itself.

The principal Congressional sponsors of BCRA commented that 11 CFR 300.34 should not be interpreted to forbid a State, district, or local political party committee from using Federal funds raised lawfully on its behalf by a Federal or State candidate or officeholder as long as the funds are contributed directly to the party committee. The Commission agrees with the sponsors' interpretation, and emphasizes that 11 CFR 300.34 applies to transfers of funds from the persons described in paragraphs (b)(1) and (b)(2).

The final sentence of paragraph (a)(1) states as a positive requirement that a State, district, or local political party committee that spends Levin funds must raise the Federal funds component of those funds by itself. As already mentioned above, the Levin Amendment imposes this fundraising requirement. 2 U.S.C. 441i(b)(2)(B)(iv).

The Levin Amendment specifically forbids particular transfers of Levin funds; that is, a State, district, or local party committee may not use as Levin funds any funds transferred to it by certain persons. 2 U.S.C. 441i(b)(2)(B)(iv)(I) through (IV). 11 CFR 300.34(b)(1) and (b)(2) implement these transfer prohibitions by expressly identifying these persons to, and from, which transfers must not be made.

Paragraph (c) of section 300.34 cross-refers to 11 CFR 300.30, which sets forth the permissible account structures for Levin funds, and 11 CFR 300.33, in which are the rules for allocation transfers between the accounts of a given State, district, or local political party committee.

11 CFR 300.35 Office Buildings

BCRA repealed 2 U.S.C. 431(8)(B)(viii), which had exempted from the definition of contribution any donation of money or anything of value, or loan, to a national or State party committee that is specifically designated to ''defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office.'' In subsequent technical amendments, however, Congress enacted 2 U.S.C. 453(b), which states: ''Notwithstanding any other provision of this Act, a State or local committee of a political party may, subject to State law, use exclusively funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act for the purchase or construction of an office building for such State or local committee.'' 2 U.S.C. 453(b).

New section 300.35 addresses three areas in implementing 2 U.S.C. 453(b). Paragraphs (a) and (b) provide for the application of State law to the source and use of funds, and provide that Federal law will not preempt the application of State law with respect to the use of non-Federal funds and Levin funds, but that Federal law will preempt State law if Federal funds are used. Paragraph (c) specifically allows a party committee to lease space in its office building to others with conditions on the deposit of funds into a Federal or non-Federal account. Finally, paragraph (d) addresses the transitional requirements for the current State party office building funds established under the repealed statutory section.

A. Application of State Law

A principal sponsor of the technical amendments described the party office building provision as ''[r]especting the primacy of State law in financing State and local party buildings.'' 148 Cong. Rec. S2339 (daily ed. March 22, 2002) (statement of Sen. McConnell). A principal sponsor of BCRA described the proposal as providing that Federal law would no longer allow a State or local party committee to receive non-Federal donations to purchase or construct an office building where such donations violated State law, that State law governs the receipt and disbursement of non-Federal donations used by State or local parties for such purposes, and that there is no ''required match consisting of Federal contributions.'' 148 Cong. Rec. S2143–2144 (daily ed. March 20, 2002) (statement of Sen. Feingold).

The final rule at paragraph (a) of new section 300.35 provides that a State or local party committee may spend either Federal funds or non-Federal funds that are not subject to the limitations, prohibitions, or disclosure provisions of the Act, so long as such funds are not contributed or donated by a foreign national. If non-Federal funds are used, they are subject to State law. If Federal funds are used, they are subject to

[6] The Commission emphasizes that revisions to section 102.6(a) regarding transfers may be forthcoming in a future rulemaking to implement changes to 2 U.S.C. 441a(d) made by BCRA. The present discussion and this rulemaking extend only to Title I of BCRA. Pub L. 107–155, March 27, 2002.

Federal law. The paragraph also incorporates language from the repealed statute and deleted regulations to the effect that the exemptions from Federal limits and prohibitions are based on the building not being purchased or constructed for the purpose of any particular Federal candidacy, but, rather, for the functioning of the party, which entails the support of most or all of the party's candidates over a number of years. The purchase or construction of the building to assist the campaign of a particular Federal candidate would entail the use of impermissible funds in a manner contrary to the basic purpose of the Federal law.

Paragraph (b) explains the coverage of State law with respect to non-Federal funds or Levin funds received by a State or local party that are spent for the purchase or construction of its office building. Other than with respect to donations by foreign nationals, Federal law would not preempt State law as to the source of non-Federal funds, State restrictions on the use of those funds (i.e., the State can prohibit or limit the use of funds with respect to the purchase or construction), or the reporting of the receipt and disbursement of those funds. In addition, Levin funds (which also exclude foreign national funds) may be used for purchase or construction, subject to State law.

The application of State law to the use of non-Federal funds is derived directly from the wording of 2 U.S.C. 453(b) and from Congressional statements. Commission advisory opinions have addressed the question of whether the repealed contribution exemption, which permitted donations to a building fund from such Federally impermissible sources as corporations, preempted State law prohibitions on the use of such funds for campaign purposes. Advisory Opinions 2001–12, 1998–8, 1998–7, 1997–14, 1993–9, 1991–5, and 1986–40. The Commission stated in these opinions that: (1) Congress decided not to place restrictions on the subject even though it could have determined that the purchase of the facility was for the purpose of influencing a Federal election; (2) Congress took the affirmative step of deleting the receipt and disbursement of funds for such activity from the proscriptions of the Act; and (3) there is no indication that Congress intended to limit the preemptive effect to some allocable portion of the purchase costs. New section 300.35 supersedes these Commission advisory opinions to the extent that they might pertain to Federal preemption with respect to use of funds from a State (and now local) party committee's non-Federal account for the purchase or construction of its office building. For example, corporate donations and donations that are excessive under Federal law, and that are in a non-Federal account, may be used for the purchase or construction of a State party office building where State law permits, and if State law forbids corporate donations and donations in excess of a particular amount, Federal law would not preempt the application of State law prohibiting the use of funds from a party committee's non-Federal account.

Although receipts and disbursements from the non-Federal accounts must comply with State law, section 300.35 does not contemplate that the Commission would take enforcement action against a party committee for violating State law with respect to the purchase or construction of its office building. Such an action is the State's responsibility. Moreover, although section 300.35 does not require the establishment of a separate bank account or book account for the receipt and disbursement of non-Federal funds for purchase or construction of the office building, Federal law does not preempt a State law requirement to establish such an account.

Paragraphs (a) and (b) of the proposed rules in the NPRM differed from the final rules. They were revised, in part, in response to public comments. Proposed paragraph (a) did not refer to the prohibition on contributions or donations from foreign nationals. In addition, paragraphs (a) and (b) provided that if the party committee used funds from the Federal account, Federal law would not preempt State law as to the permissibility of the disbursements and as to the source of funds where State law establishes additional limits or prohibitions.

Several commenters remarked on the provisions in proposed paragraphs (a) and (b) relating to the application of State law. Two commenters representing party committees expressed the concern that, with respect to the use of Federal account funds, Federal law would not supersede a State law that would further limit or prohibit contributions. They stated that this could conceivably prevent a party committee from using 100 percent Federal funds to pay for a building. They asserted that there is no support in the BCRA legislative history for this proposition, and that BCRA's intent was simply to allow State and local parties to pay for their buildings entirely with non-Federal funds and would not require them to use non-Federal funds.

Three comments, including one from the four principal sponsors of BCRA, stated that the provisions regarding application of State law should not be read to allow for the use of contributions or donations by foreign nationals to pay for the purchase or construction of the party office buildings. They indicated that BCRA was not intended to allow for such funds to be used. Two of those commenters recommended that these rules should make this prohibition clear.

As indicated above, the final rules reflect commenter input on both of these issues. The Commission notes that the exemption from Federal preemption at section 453(b) refers to the use of ''exclusively funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act,'' subject to State law. It did not extend non-preemption to Federal funds. The Commission concurs with those commenters who interpret BCRA as allowing use of funds from the committee's non-Federal account, so long as they complied with State law, but as not subjecting funds from the committee's Federal account to State law. Hence, funds in the Federal account (that are lawful under Federal law) may be used, even if they are not in compliance with the limitations and prohibitions of State law.

The final rules in paragraphs (a) and (b) also reflect the comments on the explicit inclusion of a ban on the use of funds contributed or donated by foreign nationals, and incorporate such a ban. The prohibition at 2 U.S.C. 441e is so sweeping and explicit (including an explicit prohibition of donations ''to a committee of a political party'') that it would be difficult to read the intent of BCRA as allowing for the use of such funds by a party committee for those activities. One of BCRA's principal sponsors stated that BCRA ''prohibits foreign nationals from making any contribution to a committee of a political party or any contribution in connection with federal, state or local elections * * * This clarifies that the ban on contributions [by] foreign nationals applies to soft money donations.'' 148 Cong. Rec. S1994 (daily ed. March 18, 2002) (statement of Senator Feingold). *See also United States* v. *Kanchanalak,* 192 F.3d 1037 (D.C. Cir. 1999). This ban also applies to any in-kind contribution or donation by a foreign national such as a direct payment to a seller, builder, or other vendor for purchase or construction.

Paragraphs (a) and (b) of the final rules include technical changes to state more clearly than the proposed rule that

the pertinent funds include funds that are in the accounts but were not received specifically for the purchase or construction, as well as funds specifically received for that purpose. In addition, the sentence in paragraph (a) discussing the application of State law is changed to conform to other parts of the regulation emphasizing that this exemption is meant to apply only to a State or local committee paying for its own building.

B. Proposals Excluded From the Final Rule

The proposed rule included two paragraphs, (c) and (d), which are not included in the final rule. Proposed paragraph (c) would have defined ''purchase or construction of an office building'' by defining the individual terms, ''office building,'' ''purchase,'' and ''construction.'' The terms were defined to explicitly include and exclude certain items or actions. The proposed definition of ''office building,'' particularly as it pertained to the explicit exclusion of certain items, would have treated the use of the term ''building'' in 2 U.S.C. 453(b), instead of the term ''facility'' in the repealed exemption, as signifying a Congressional intent to narrow the scope of the covered costs. Recent advisory opinions stated that expenses that were ''capital expenditures'' under the Internal Revenue Code would be payable by the building fund (as opposed to business expenses). These opinions have been interpreted to allow building fund payments to purchase office equipment, furniture, and similar items. *See* Advisory Opinions 2002–12, 2001–01, and 1998–7; *see also* 26 CFR 1.263(a)–(1) and 1.263(a)–(2).

Proposed exclusions explicitly listed in the draft definitions of ''purchase'' and ''construction'' were drawn from exclusions specified in previous Commission advisory opinions (in those aspects of the opinions that did not pertain to Federal preemption). The NPRM narrative for these definitions also included examples of what would and would not constitute ''construction.'' Proposed paragraph (d) would have stated that an expense that did not fit within the definition of ''purchase or construction of an office building'' would be an allocable administrative cost unless it fell within another category, such as a support of a Federal candidate.

The Commission sought comment on whether the proposed definition of ''building'' should include, rather than explicitly exclude, items such as office equipment, machinery, or furniture. More generally, the Commission sought comment on whether BCRA's use of the term ''building'' instead of ''facility'' contemplated a narrowing of the range of expenses falling within the exemption.

Three commenters representing party committees asserted that BCRA did not intend the change in terminology from ''facility'' to ''building'' to represent a change in the expenses covered by the exemption. One commenter noted that the McCain-Feingold bill as passed by the Senate in 2001 eliminated the building fund exemption for national and State parties and also provided that ''Federal election activity'' would specifically not include ''the cost of constructing or purchasing an office facility or equipment for a State, district, or local committee.'' An amendment adopted by the House eliminated a transition provision allowing national party committees to spend building fund donations raised prior to the effective date of the new law, and that amendment also eliminated the language as to the purchase of an office facility or equipment. The commenter characterized the technical amendment now in effect as merely a restoration of the deleted provision on the State and local office facility or equipment, noting that one of BCRA's principal sponsors characterized this as a non-substantive amendment.

One of the party committee commenters urged the Commission to continue to use principles from the Internal Revenue Code ''such that capital expenditures would be allowed from the building fund (subject to state law) and ongoing expenses would not.'' Two of the party committee commenters maintained that the question of narrowing the definition is a moot point because they believe that if certain costs were not deemed to be within the definition, they would be classified as administrative costs and should be payable with 100% non-Federal funds.

In contrast, three comments, including one from the principal sponsors, maintained that the change from ''facility'' to ''building'' indicated a Congressional intent to narrow the scope of the exemption and that items such as office equipment, machinery, or furniture should not be included within the exemption. They agreed with the proposed definition of ''office building.'' The sponsors also stated that it was their intent that administrative expenses related to office buildings should be allocable between Federal and non-Federal accounts or Federal and Levin accounts.

The Commission also sought comment on whether more examples should be included in the sub-definitions of ''purchase'' or ''construction,'' or whether the advisory opinion process would best suit that purpose. Specifically, it asked whether payments for a long-term lease with an option to purchase the rented building should be included within the definition of purchase. One commenter stated that, to avoid abuses, the Commission should establish a bright line rule that treats purchases as falling within the exemption and leases as administrative expenses.

The final rule does not include the proposed definitions of ''office building,'' ''purchase,'' or ''construction,'' or the proposed allocation provision. The Commission does not view section 453(b) as evidence of any Congressional intent to narrow or otherwise change the scope of the activities (from that of the repealed exemption) for which building fund monies may be donated or spent. Specifically, the Commission concludes that BCRA does not supercede or in any way displace the Commission's various advisory opinions regarding building fund activities as applied to State, district or local political party committees. Accordingly, those advisory opinions remain in force and effect. The Commission believes that State and local party committees needing information as to the scope of the costs covered can receive guidance from the Commission's previous advisory opinions.

C. Leasing a Portion of the Office Building to Others

Paragraph (c) of the final rule allows a State or local party committee to lease a portion of its office building to others at the usual and normal rental charge. The sources of funds will determine the account in which the rent revenues can be deposited.

This provision did not appear in the NPRM. The Commission requested comments, however, on whether a party that owned an entire office building would also be able to lease space in the building to others at fair market rates in order to generate income. The Commission also sought comments on whether the sources of the funds used to purchase or construct the office building should govern or guide the Commission in the determination of the lawful uses of such income.

One commenter, speaking on behalf of party committees, stated that party committees should be permitted to rent space in their office buildings to State and local candidates regardless of the source of funds used to purchase the buildings. The comment from the principal sponsors of BCRA stated that

BCRA permits a party committee to generate income by leasing parts of its building and describes how to determine whether the funds may be deposited in a Federal or non-Federal account. Specifically, a purchase in whole or in part with non-Federal funds would require the deposit of rental income into the non-Federal account to be used only for non-Federal purposes. Rental income generated from a building purchased solely with Federal funds may be deposited in the committee's Federal account only if all the revenues collected comply with the limitations, prohibitions, and reporting requirements of the Act.

The Commission has concluded that the source of funds used to construct or purchase the building must determine where the rental revenues may be deposited. If only Federal funds were used, the revenues may be deposited in the Federal account. If any non-Federal funds were used, the revenues must be deposited in a non-Federal account, provided that State law permits. These requirements ensure that the committee's Federal account is not indirectly funded (through rental payments) by donations that do not meet the requirements of the Act, such as corporate donations.

Consistent with the jurisdiction of State law over non-Federal accounts, the rule provides that the revenue received by the non-Federal account must comply with State law. The rental amounts deposited in the Federal account would have to be disclosed as an ''other receipt,'' pursuant to 11 CFR 104.3(a)(4)(vi). The Commission notes that the purchase or rental of a committee asset is considered a contribution, unless excepted through the advisory opinion process with respect to specific types of assets or particular circumstances (e.g., isolated sales of specific committee assets developed or purchased for the committee's own use, rather than for fundraising, and campaign equipment and leftover supplies of an authorized committee wishing to terminate). *See, e.g.*, Advisory Opinions 1992–24, 1991–34, 1990–26, 1989–4, and 1986–14; *see also* 11 CFR 100.7(a)(2). Commission advisory opinions have also interpreted the regulations to allow a committee to invest its funds and to treat the interest, dividends, or other returns on the investment (under particular circumstances) as ''other receipts.'' *See* Advisory Opinions 1999–8, 1989–6, and 1986–18. The Commission views the leasing of portions of the building as the equivalent of obtaining income through the investment of committee assets or funds. Under particular circumstances, such leasing out may also be viewed as an isolated sale of a unique committee asset purchased for the committee's own use. Hence, the payment of rent for office building space to the party committee at the usual and normal charge is not a contribution. If the tenant pays rent in excess of the usual and normal charge and the rent is deposited in the Federal account, then the amount in excess would be a contribution and reportable as such. An excess payment from a corporate tenant would be in violation of 2 U.S.C. 441b. *See* Advisory Opinions 1992–24 and 1990–26.

D. Transitional Provisions for State Party Building or Facility Account

The final rule at 11 CFR 300.35(d) addresses office building accounts set up by State party committees under repealed 2 U.S.C. 431(8)(B)(viii). The regulation states that up to and including November 5, 2002, such accounts may accept funds that are ''designated for the purchase or construction of an office building.'' The rule then states that, starting on November 6, 2002, the funds in the account may not be used for Federal account or Levin account purposes but may be used for any other non-Federal purposes as permitted by State law.

The NPRM differed from the final rule in two respects. Like the final rule, the proposed rule provided that, up until November 5, 2002, a State party committee could accept funds into the account, but then indicated that the funds in the account could only be used for the construction or purchase of an office building or facility. In place of the language on the use of the funds in the account, the final rule states that it applies to funds ''designated for the purchase or construction of an office building.'' Both the final rule and the proposed rule provide that, starting on November 6, 2002, the funds are not useable for Federal account or Levin account purposes but may be used for any other non-Federal purposes, as permitted by State law. However, the proposed rule also would have provided that the funds would be subject to specific paragraphs of the proposed rule, including the definitional paragraph that is now deleted.

Two commenters from the party committees criticized the NPRM version of the transitional provisions, stating that unlike the national party building and facility fund transition provisions in BCRA, there is no BCRA provision covering the spending of funds by the already existing State party office facility fund. One of those commenters criticized the State law limitation on the use of the funds from the account once BCRA goes into effect, noting that the funds had been lawfully raised under the exemption in the repealed statutory section.

The final rule as to the use of building fund accounts prior to the effective date of BCRA is not meant to deviate from any current permissible uses of those accounts. As to the use of those accounts after the effective date, the regulation was written to conform the treatment of the funds in the accounts established under the repealed statutory section with BCRA and still allow their use for election purposes. As unlimited non-Federal funds, they could not be used for Federal account or Levin account purposes. As such, however, they may be used for non-Federal purposes, and the Commission also recognizes the control by State law over the permissibility of such funds.

11 CFR 300.36 Reporting Federal Election Activity; Recordkeeping

BCRA establishes certain reporting requirements for State, district, and local committees that are political committees and that finance Federal election activities. *See* 2 U.S.C. 434(e)(2). This requirement for these political committees extends generally to all receipts and disbursements for Federal election activities if the aggregate amount of receipts and disbursements for such activity is $5,000 or more per calendar year, 2 U.S.C. 434(e)(2)(A), and specifically extends to receipts and disbursements of Levin funds. 2 U.S.C. 434(e)(2)(B). These requirements added by BCRA are in addition to the existing FECA requirements to report expenditures of Federal funds under 2 U.S.C. 434. *See* also 11 CFR part 104.

Paragraph (a) of new section 300.36 applies to two types of entities. The first is a State, district, or local political party committee that has not qualified as a political committee under 2 U.S.C. 431(4) or 11 CFR 100.5. The second is an association or similar group of candidates for State or local office or of individuals holding State or local office (*see* 2 U.S.C. 441i(b)(1)) that has not qualified as a political committee under 11 CFR 100.5. In the NPRM, the Commission sought comments as to what, if any, reporting requirements an association or similar group of candidates for, or holders of, State and local office may have under 2 U.S.C. 434(e)(2) if it is not a political committee. The Commission received one comment, from a public interest group, which suggested that the result should depend on whether the association or similar group has attained

political committee status under 11 CFR 100.5. The Commission has concluded that such an association or similar group that has not qualified as a political committee has no reporting requirements under 2 U.S.C. 434(e)(2) because that section, by its own terms, applies to ''political committees.'' The Commission further concludes such an association or similar group is in a position analogous to a political party organization that is not a political committee under 11 CFR 100.5 to the extent both engage in Federal election activity. Therefore, in the final rules, such an association or similar group that has not qualified as a political committee under 11 CFR 100.5 must comply with paragraph (a) of section 300.36.

Paragraph (a) recognizes that neither type of organization has reporting requirements under BCRA because it is not a political committee. *See* 2 U.S.C. 434(e)(2). Under paragraph (a)(1), both types of organizations must demonstrate through a reasonable accounting method that they have sufficient Federal funds on hand to pay the required Federal portion of the costs of Federal election activity under 11 CFR 300.32 and 300.33. Paragraph (a)(1) also requires each type of organization to keep records of Federal receipts and disbursements and to make those records available to the Commission upon request. A State party committee and an association of State party officials commented in support of paragraph (a)(1), to the extent that it applies to political party committees.

A national party committee commented in opposition to proposed paragraph (a)(2), which would have required a payment for Federal election activity to be treated as an expenditure, regardless of whether it qualified as an expenditure under the statutory definition. *See* 2 U.S.C. 431(9). This commenter objected to characterizing a payment of Federal funds for Federal election activity as an expenditure ''even if such activity does not reference any Federal candidate.'' A State party committee and an association of State party officials made very similar comments, citing Advisory Opinion 1999–4. The State party committee characterizes this advisory opinion as ''rul[ing] that only disbursements that influence a specific Federal election count towards the dollar thresholds in [11 CFR 100.5(c)].'' The State party committee's primary concern is that ''thousands'' of local and district committees not currently required to register and file reports with the Commission will be required to do so. One of the commenters stated that the Commission has ''effectively acknowledged'' in paragraph (a)(1) of section 300.36 that ''Congress did not intend first-dollar disclosure of'' Federal election activity spending. Conversely, a public interest group commented in support of this paragraph.

Paragraph (a)(2) clarifies that a payment of Federal funds or Levin funds for the costs of Federal election activity does not constitute an expenditure for purposes of determining whether or not a State, district, or local political party committee, or an association or similar group of candidates for State or local office or of individuals holding State or local office, becomes a political committee, under 11 CFR 100.5, unless the payment otherwise qualifies as an expenditure under 2 U.S.C. 431(9). Paragraph (a)(2) also states that a payment of Federal funds for the costs of Federal election activity that refers to a clearly identified Federal candidate and that meets the definition of ''exempt activities'' (*see* 11 CFR 100.8(b)(10), (16), and (18)) is to be treated as a payment for exempt activities for the purposes of determining political committee status under 2 U.S.C. 431(4)(C) and 11 CFR 100.5(c).

Paragraph (b) of section 300.36 applies to State, district, and local political party committees, and to an association or similar group of State and local candidates and officeholders, that disburse Federal funds for Federal election activities and that have qualified as political committees under 11 CFR 100.5. The heading of paragraph (b)(1) is revised from the version of the regulation published in the NPRM. The new heading makes clear that paragraph (b)(1) applies to State, district, and local political party committees that have qualified as political committees and that have less than $5,000 in total receipts and disbursements for Federal election activity (*see* 2 U.S.C. 434(e)(2)(A)), and to an association or similar group of candidates for State or local office or of individuals holding State or local office at all times. Paragraph (b)(1) provides that such committees must report all receipts and disbursements of Federal funds for all or part of the costs of Federal election activity. Paragraph (b)(1) goes on to state that this requirement applies even if the committee has less than $5,000 of aggregate receipts and disbursements for Federal election activity. *See* 2 U.S.C. 434(e)(2)(A). A national party committee and a State party committee commented in opposition to the requirement of itemization of Federal receipts for Levin activity, because ''Federal receipts will be used fungibly for multiple purposes.'' The Commission points out that Federal receipts are not fungible, as far as spending for Federal election activity goes, to the extent that receipts include transfers from other party committees. A State, district, or local committee must not use transferred funds for Federal election activity spending. 2 U.S.C. 441i(b)(2)(B)(iv). Moreover, Congress has specifically required itemization of these receipts. 2 U.S.C. 434(e)(3). The final sentence of 11 CFR 300.36(b)(1) provides that a disbursement of Federal funds or Levin funds for Federal election activity will not be deemed an expenditure and reported as such, unless it satisfies the definition of expenditure in 2 U.S.C. 431(9).

In the final rules, the Commission has corrected an inadvertent omission that appeared in the version of paragraph (b)(1) of section 300.36 published in the NPRM. The words ''receipts and'' have been inserted before the word ''disbursement'' in the second sentence. The preamble of 11 CFR 300.36(b)(1) correctly discussed the paragraph, referring to ''receipts and disbursements.'' 67 FR 35671. The Commission has also deleted an unnecessary and potentially confusing introductory clause in one of the sentences in this paragraph.

Paragraph (b)(2) implements the broader reporting provisions of 2 U.S.C. 434(e)(2)(A) and (B) with regard to State, district, and local political party committees. The heading of this paragraph has been revised from the version of the regulation published in the NPRM. The change is intended to make clear that this paragraph applies to State, district, and local political party committees that are political committees and that have $5,000 or more of total receipts and disbursements for Federal election activity. 2 U.S.C. 434(e)(2)(A) and (B). Paragraph (b)(2) does not apply to an association or similar group of State and local candidates and officeholders that disburses Federal funds for Federal election activities because such groups are not authorized to raise and spend Levin funds, and thus may not allocate disbursements for Federal election activity between Federal funds and Levin funds. *See* 2 U.S.C. 441i(b)(2), which applies only to party committees. These committees always report under part 104 of Title 11 because they may have no Levin funds to report pursuant to paragraph (a), discussed above.

The first sentence of paragraph (b)(2) states the basic rule that all receipts and disbursements for Federal election activity must be reported if the political committee has an aggregate of $5,000 or more of such receipts and

disbursements in a calendar year. The second sentence makes it clear that this basic reporting rule extends to Levin funds used for Federal election activity.

Paragraphs (b)(2)(i) through (iv) have been revised, or added, since the version of the regulation published in the NPRM. As published in the NPRM, the regulation would have referred the reader to 11 CFR 104.17(b) to identify important elements of information that must be reported under this section 300.36. Instead, paragraphs (b)(2)(i) through (iv), as adopted in the final rules, state these requirements expressly, for the convenience of the reader. These requirements generally parallel the requirements adopted in 11 CFR 104.17(b) with certain modifications appropriate to the context of expenses allocated among Federal election activities.

Paragraph (b)(2)(i) pertains to disclosure of the methods State, district, or local committees use to report allocating expenses for Federal election activity between Federal funds and Levin funds. Paragraph (b)(2)(i)(A) of section 300.36 specifies that a committee must state the allocation percentages for Federal election activity disbursements that are used in its reports. This paragraph includes a specific cross-reference to 11 CFR 300.33(b), where these allocation percentages for Federal election activity are set out.

Paragraph (b)(2)(i)(B) of section 300.36 requires the committee to report which allocable category of Federal election activity a given allocated disbursement falls into. In paragraph (b)(2)(i)(B), the reference to allocable category of Federal election activity means the type of Federal election activity as defined in 11 CFR 100.24 (e.g., voter registration activity as defined in section 100.24(b)(1), or voter identification as defined in section 100.24(b)(2)(i)). Note that expenses for certain categories of Federal election activity are not allocable between Federal funds and Levin funds (e.g., public communications that promote or support, or attack or oppose, a clearly identified Federal candidate under 11 CFR 100.24(b)(3)). *See* 11 CFR 300.33(a).

Paragraph (b)(2)(ii) pertains to reporting of allocation transfers between a Levin or non-Federal account and a Federal account, or among a Levin or non-Federal account, a Federal account, and a designated allocation account for allocated Federal election activity. All transfers related to a category of Federal election activity must identify that category. Paragraph (b)(2)(iii) specifies the elements of information that must be reported for an allocated disbursement for Federal election activity, including the name and address of the payee, the date of the payment, and the purpose of the payment. This paragraph also sets out itemization requirements for disbursements covering more than one program or activity. Paragraph (b)(2)(iv) covers itemization of disbursements of more than $200. 2 U.S.C. 434(e)(3).

Paragraph (b)(3) alerts the reader to the rules for reporting payments allocated between Federal funds and non-Federal funds that are not covered in paragraph (b)(2). As explained above, paragraph (b)(2) applies only to payments for Federal election activity allocated between Federal funds and Levin funds under 11 CFR 300.33. The reporting regulation for payments allocated between Federal funds and non-Federal funds are contained in 11 CFR 104.17. For example, section 104.17 addresses reporting of administrative expenses.

Paragraph (c)(1) implements BCRA's new requirement for monthly filing by party committees that come under new section 434(e) of the Act. 2 U.S.C. 434(e)(4). This is accomplished by referring to the Commission's existing regulation specifying monthly reporting, e.g., 11 CFR 104.5(c)(3).

In the NPRM, the Commission sought comments on the applicability of the $50,000 annual threshold for electronic filing to receipts and disbursements for Federal election activities. *See* 11 CFR 104.18. The Commission received two comments. An association of State party officials opposed applying receipts and disbursements for Federal election activities toward the electronic filing threshold because these ''will also be disclosed on the party committee's regularly filed reports.'' The Commission notes that this comment, while true, could be applied to any committee with regard to electronic filing. A public interest group commented that receipts and disbursements for Federal election activity should apply to the electronic filing threshold.

Consistent with 2 U.S.C. 434(a)(11), paragraph (c)(2) of section 300.36 provides that contributions and expenditures of Federal funds for Federal election activity apply to the $50,000 threshold for mandatory electronic filing. When determining whether a receipt of Federal funds for Federal election activities is a contribution, the Commission's regulation at 11 CFR 100.7, including the exclusions in paragraph (b) of that section, must be applied. Similarly, when determining whether a disbursement of Federal funds for Federal election activity is an expenditure, the Commission's regulation at 11 CFR 100.8, including the exclusions in paragraph (b) of that section, must be applied. The Commission discerns no reason why a contribution or expenditure should be treated differently for this purpose simply because it is related to a Federal election activity. The Commission emphasizes that this provision does not apply to receipts and disbursements of Levin funds for Federal election activity, and does not apply to receipts and disbursements that are not ''contributions'' or ''expenditures'' as defined by the FECA.

Finally, paragraph (d) of section 300.36 supports the disclosure provisions outlined above by adding a recordkeeping requirement. Paragraph (d) refers to the Commission's existing regulation on recordkeeping, 11 CFR 104.14. This requirement is necessary to ensure that sufficient documentation exists to ensure compliance with the disclosure provisions of BCRA.

11 CFR 300.37 Prohibitions on Fundraising for and Donating to Certain Tax-Exempt Organizations

BCRA prohibits State, district, and local party committees, their officers and agents acting on their behalf, and entities directly or indirectly established, maintained, financed, or controlled by them, from soliciting any funds for, or making or directing any donations to certain tax exempt organizations engaged in certain election-related activity. 2 U.S.C. 441i(d). Except as discussed below, the ban on State party fundraising for tax-exempt organizations at new 11 CFR 300.37 mirrors the provision applicable to the prohibition on national party committee fundraising for these organizations at new 11 CFR 300.11. *See* Explanation and Justification for 11 CFR section 300.11 above for a discussion of comments received in response to specific questions raised in the NPRM.

Paragraph (a)(3) implements BCRA's prohibition on State party committee fundraising for, and donations to, a section 527 organization unless the organization is a ''political committee,'' a State or local party committee, or an authorized committee of a State or local candidate. The NPRM asked whether the term ''political committee'' in 11 CFR 300.37 should mirror the definition of that term in 2 U.S.C. 431(4), which would encompass only organizations that make contributions and expenditures in connection with Federal elections or whether it should be interpreted to also encompass State-registered political committees that support only State and local candidates.

BCRA's cosponsors stated that it would be in keeping with the intent of BCRA to permit State, district, and local party committees ''to make a non-federal donation to a section 527 organization registered as a State PAC as long as such a State PAC does not make expenditures and disbursements in connection with an election for Federal office, including expenditures and disbursements for Federal election activity.'' Several party committee commenters and at least one public interest group agreed with this approach. One public interest commenter disagreed, stating that permitting State and local party committees to fundraise for, or donate to, State political committees ''would be contrary to the letter and spirit of BCRA.''

Accordingly, in the final rules, new paragraph (a)(3)(iv) of section 300.37 permits a State, District or local party committee to solicit funds for, or donate to, a political committee registered under State law that supports only State or local candidates and does not make expenditures or disbursements in connection with an election for Federal office, including expenditures and disbursements for Federal election activity. The Commission agrees with the sponsors and other commenters that this new paragraph is consistent with the major purpose of BCRA—to prohibit non-Federal funds from being used in connection with Federal elections. As long as the section 527 organization for which funds are being raised exclusively supports non-Federal candidates and does not finance activities that could benefit Federal candidates, such as get-out-the-vote activities in connection with an election in which a Federal candidate appears on the ballot, BCRA's intent is preserved.

As discussed in the Explanation and Justification for 11 CFR 300.11, a safe harbor provision has been added at 11 CFR 300.37(c). Because 11 CFR 300.37(a) permits State, district and local party committees to solicit funds for, or donate funds to, section 527 organizations that are State-registered political committees and that meet certain other requirements, paragraph (c)(2) of the final rules contains an additional safe harbor provision applicable to those organizations. This safe harbor is similar to the safe harbor provision applicable to section 501(c) organizations in paragraph (c)(1). The safe harbor provides that a State, district, and local party committee may obtain and rely upon a certification from certain section 527 organizations to determine whether such organizations fall outside the fundraising/donations prohibition.

Paragraph (d) of 11 CFR 300.37 sets forth the criteria for the certification for both 501(c) organizations and certain section 527 organizations. This paragraph for the most part tracks the criteria for certifications by section 501(c) organizations set forth in 11 CFR 300.11(d). *See* Explanation and Justification for 11 CFR 300.11. Additionally, paragraph (d)(1) of 11 CFR 300.37 provides that in the case of a section 527 organization that is a State-registered political committee pursuant to paragraph (a)(3)(iv), the certification is a written statement signed by the committee treasurer. As the individual who oversees expenditures of a political committee, the treasurer has knowledge of the types of activities undertaken by the organization. The remaining certification requirements are identical to those for section 501(c) organizations.

New paragraphs (e) and (f) of 11 CFR 300.37 mirror the provisions in 11 CFR 300.11(e) and (f) as applied to State, district, and local party committees and other covered persons rather than national party committees. *See* Explanation and Justification for 11 CFR 300.11.

Subpart C—Tax-exempt Organizations

For the convenience of readers interested in locating rules pertaining to fundraising and donations to tax-exempt organizations, subpart C of new part 300 combines in a single place the prohibitions on national, State, district, and local party committee donations to, and fundraising for, certain 501(c) and 527 tax-exempt organizations and the rules governing fundraising by Federal candidates and officeholders for 501(c) organizations.

The proposed rules for 11 CFR 300.50 (national party prohibition) and 11 CFR 300.51 (State party prohibition) were identical to proposed 11 CFR 300.11 (national party prohibition) and proposed 11 CFR 300.37 (State party prohibition), respectively.

The final rule at 11 CFR 300.50 (national party prohibition) is identical to the final rule at 11 CFR 300.11; the final rule at 11 CFR 300.51 (State party prohibition) is identical to the final rule at 11 CFR 300.37; and the final rule at 11 CFR 300.52 (regulations governing Federal candidate and officeholder solicitations for 501(c) organizations) is identical to the final rule at 11 CFR 300.65. The Explanation and Justification for 11 CFR 300.11, 300.37 and 300.65 apply to 11 CFR 300.50, 300.51 and 300.52, respectively.

Subpart D—Federal Candidates and Officeholders

11 CFR 300.60 Scope

BCRA places limits on the amounts and types of funds that can be raised by Federal candidates and officeholders for both Federal and State candidates. *See* 2 U.S.C. 441i(e). The Commission is placing the regulations that address these limitations in 11 CFR part 300, subpart D.

Section 300.60 explains that these restrictions apply to Federal candidates and officeholders, their agents, and entities directly or indirectly established, maintained, or controlled by, or acting on behalf of, any such candidate(s) or officeholder(s). As defined in 2 U.S.C. 431(3) and existing 11 CFR 100.4, ''Federal office'' means the elective office of President or Vice President of the United States, Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States. There is a similar definition of ''Federal officeholder'' in 11 CFR 113.1(c). As noted above, the Commission is adding a comparable definition at 11 CFR 300.2(o). Persons covered by the restrictions in this subpart may not ''solicit, receive, direct, transfer or spend'' non-Federal funds unless certain requirements are satisfied, and subject to certain exceptions explained below.

No comments were received on this section.

11 CFR 300.61 Federal Elections

Section 300.61 as proposed in the NPRM prohibited any Federal candidate or officeholder, his or her agent, or any person described in section 300.60, above, from soliciting, receiving, directing, transferring, or spending non-Federal funds in connection with an election for Federal office, including funds for any Federal election activity described in 11 CFR 100.24, discussed above. 2 U.S.C. 441i(e)(1)(A). One commenter urged the Commission to construe this language to prohibit a candidate only from raising non-Federal funds that would eventually benefit the candidate's own campaign. Because the Commission does not find support in the statutory language for this approach, it is not incorporating this recommendation.

The principal sponsors of BCRA asked the Commission to include ''disburse'' in the list of specified actions, so as to clarify that a person described in 11 CFR 300.60 must use Federal funds when disbursing funds in connection with an election for Federal office. The Commission appreciates the desire for uniformity between sections

300.61 and 300.62, discussed below; and also notes that drawing a distinction between funds that are ''spent'' and funds that are ''disbursed'' for certain purposes could prove problematic. Accordingly, it is adding ''disburse'' to the list of covered activities in section 300.61.

11 CFR 300.62 Non-Federal Elections

BCRA also prohibits any Federal candidate or officeholder, his or her agent, or any other person described in § 300.60, from raising, receiving, directing, transferring, or spending or disbursing funds in connection with any non-Federal election, unless the funds are not in excess of the amounts permitted with respect to contributions to candidates and political committees and are not from sources prohibited by the Act from making contributions in connection with Federal elections. 2 U.S.C. 441i(e)(1)(B).

The NPRM limited this restriction to Federal funds subject to the limitations and prohibitions of the Act. One comment requested the Commission to remove the term ''Federal'' from this definition, to make it cover all funds that are subject to the limitations and prohibitions of the Act. The Commission is making this change, which is consistent with the statutory language; and is making additional changes to further parallel the statutory language.

In discussing proposed 11 CFR 300.61 and 300.62, the NPRM stated that these prohibitions encompassed ''leadership PACs'' and ''candidate PACs'' because they are entities ''directly or indirectly established, financed, maintained, or controlled by'' Federal candidates and/or officeholders as defined in 11 CFR 300.2(c). Generally, ''leadership PACs'' and ''candidate PACs'' are political organizations set up by congressional leaders and other Federal candidates and officeholders, in part, as a way to support other candidates' campaigns. Although candidate PACs and leadership PACs are not specifically mentioned, the legislative history indicates that 2 U.S.C. 441i(e)(1) is intended to prohibit Federal officeholders and candidates from soliciting any funds for these committees that do not comply with FECA's source and amount limitations. *See* 148 Cong. Rec. S2140 (Daily ed. March 20, 2002) (statement of Sen. McCain). Consequently, the NRPM stated that Federal candidates and officeholders and their leadership and candidate PACs must not solicit, receive, direct, transfer, or spend funds for such a PAC's Federal or non-Federal account unless the funds complied with the Act's source and limitations requirements.

The comments of the national party committees construed the NPRM statements, in light of statements made in the Senate debates, to mean that a person could contribute $5,000 to the Federal account of a ''leadership'' PAC and could donate an additional $5,000 to the non-Federal account of the same committee. These commenters expressed support for such an interpretation of the proposed rules and further argued that the national party ban on raising and spending non-Federal funds found at 2 U.S.C. 441i(a) should be construed similarly. As noted elsewhere, the Commission believes that the plain language of 2 U.S.C. 441i(a) prevents such an interpretation as to the national party committees. No other commenters addressed this point in their written comments, although some commenters testified that the statutory language could be interpreted either to permit solicitations of $5,000 each for a Federal and non-Federal account of a leadership PAC in light of the floor statements, or not to permit such PACs to have non-Federal accounts at all. Another commenter argued that the statutory language did not include the term ''non-Federal accounts,'' but instead permitted a Federal officeholder to solicit, receive, direct and spend funds ''in connection with non-Federal elections.''

The Commission notes first that the definition of an entity ''directly or indirectly established, financed, maintained, or controlled'' is being modified in the final rules from the definition contained in the proposed rule at section 300.2(c). The final rule defines this phrase by incorporating the affiliation factors set forth at 11 CFR 100.5(g)(4)(ii). Consequently, 11 CFR 300.62, permitting solicitations and spending for funds ''in connection with'' a non-Federal election applies to a candidate PAC or leadership PAC to the extent that the PAC comes within the new definition of 11 CFR 300.2(c). Secondly, in discussing BCRA's restrictions on the solicitation and spending of non-Federal funds by Federal candidates and officeholders, the co-sponsors stated that these provisions were part of a ''system of prohibitions and limitations on the ability of Federal officeholders and candidates, to raise, spend and control soft money'' in order ''to stop the use of soft money as a means of buying influence and access with Federal officeholders and candidates.'' *See* 148 Cong. Rec. S2139 (Daily ed. March 20, 2002) (statement of Sen. McCain). In light of this purpose, the Commission notes that new 11 CFR 300.62 permits Federal candidates and officeholders to solicit, receive, direct, transfer, spend, or disburse funds in connection with Federal and non-Federal elections only from sources permitted under the Act and only when the combined amounts solicited and received from any particular person or entity do not exceed the amounts permitted under the Act's contribution limits and are not from prohibited sources. In other words, a Leadership PAC that comes within the definition of 11 CFR 300.2(c) can raise up to a *total* of $5,000 from any particular person or entity, regardless of whether the funds are contributed to the PAC's Federal account, donated to its non-Federal account, or allocated between the two. In addition, the Commission agrees with commenters who pointed out that 11 CFR 300.62 does not permit Federal candidates and officeholders, their agents and entities established, financed, maintained, or controlled by them to solicit, receive, direct, transfer, spend, or disburse non-Federal funds for Federal elections.

11 CFR 300.63 Exception for Non-Federal Candidates

An exception to the fundraising prohibition applies when a Federal candidate or Federal officeholder is a candidate for State or local office. 2 U.S.C. 441i(e)(2). Such candidates may raise and spend non-Federal funds for their State campaign, as long as their activities are consistent with State law and refer only to their status as a State or local candidate, to other candidates for that same office, or both. This exception is reflected in new 11 CFR 300.63. Please note that if a State or local candidate is simultaneously a candidate for Federal office, he or she must raise and spend only Federal funds in connection with the Federal campaign. No comments addressed this provision.

11 CFR 300.64 Exemption for Attending, Speaking, or Appearing as a Featured Guest at Fundraising Events

BCRA contains an exemption from the fundraising prohibition for Federal candidates and officeholders who attend, speak, or appear as a featured guest at a State, district, or local party committee fundraising event. 2 U.S.C. 441i(e)(3). The NPRM sought comment on how to construe and implement this exemption, particularly in light of the separate general prohibition on Federal candidates and officeholders soliciting non-Federal funds in connection with an election for Federal, State, or local office. The NPRM sought comment on the provision in light of Sen. McCain's

explanation in the Senate debate that Federal candidates and officeholders ''cannot solicit soft money funds, funds that do not comply with Federal contribution limits and source prohibitions, for any party committee—national, State, or local.'' 148 Cong. Rec. S2139 (daily ed. March 20, 2002) (statement of Sen. McCain). The Commission initially sought comment on a rule proposing that, while such individuals could attend, speak, or be a featured guest at a State or local party fundraising event, they could not say anything that could be construed as soliciting or otherwise seeking non-Federal funds. In the alternative, the NPRM sought comment on whether the fundraising event provision was a total exemption from the general solicitation ban, whereby Federal candidates and officeholders and their agents may attend and speak freely at such events. The phrase ''featured guest'' strongly suggests that State, district, or local party committees may publicize in advance that a Federal candidate or officeholder will be attending and speaking at an event, and the Commission sought comments on whether this means that Federal candidates and officeholders may be referred to in invitation materials for the event, or appear as members of a host committee, or be honored at the event.

The Commission received a range of comments on these issues. Some advocated a restrictive approach, arguing that any other construction would undercut the fundraising prohibition. Others noted that it could be almost impossible for a Federal candidate or officeholder not to become involved in at least indirect fundraising, such as thanking people in a rope line for their support, by virtue of the fact that they are appearing and speaking at a fundraising event, which the statutory exemption expressly permits. Some claimed that monitoring every word the speaker said could turn the Commission into ''speech police,'' raising First Amendment concerns. U.S. CONST. amend. I (''Congress shall make no law * * * abridging the freedom of speech * * *''). Also, the fact that a candidate or officeholder is to be honored at an event implies that his or her name or picture may appear prominently on invitations, flyers, and other material distributed in connection with the event.

The Commission has decided to construe the statutory exemption permitting Federal candidates and officeholders to attend, speak, and appear as a featured guest at State, district or local party committee fundraising events without regulation or restriction. This conclusion is compelled by the plain language of the section and the structure of the section within BCRA. The structure of the statute requires the Commission to construe the provision as a total exemption to the solicitation prohibition, applicable to Federal candidates and officeholders, when attending and speaking at party fundraising events, because the statutory section is styled as such. To conclude otherwise would require the Commission to read the restrictions itemized in the general prohibition into a statutory exemption that clearly and unambiguously excludes those restrictions by it own terms. It would also require the Commission to regulate and potentially restrict what candidates and officeholders say at political events, which is contrary to the plain meaning of the statutory exemption and would raise serious constitutional concerns. Accordingly, candidates and officeholders are free under the rule to speak at such functions without regulation or restriction. In addition, as several commenters urged, State, district, and local party committees are free within the rule to publicize featured appearances of Federal candidates and officeholders at these events, including references to these individuals in invitations. The Commission concludes, however, that Federal candidates and officeholders are prohibited from serving on ''host committees'' for a party fundraising event or from personally signing a solicitation in connection with a State, local, or district party fundraising event, on the basis that these pre-event activities are outside the permissible activities described above flowing from a Federal candidate's or officeholder's appearance or attendance at the event. The rule, consistent with the statute, places no restriction on the speech of Federal candidates and individuals holding Federal office at these fundraising events.

11 CFR 300.65 Exceptions for Certain Tax-Exempt Organizations

In 2 U.S.C. 441i(e)(1), BCRA prohibits candidates and officeholders from soliciting, receiving, directing, transferring, or spending funds unless the funds meet the source and amount restrictions of the Act. *See also* new 11 CFR 300.61 and 11 CFR 300.62. BCRA creates two exceptions from that general rule in 2 U.S.C. 441i(e)(4): (1) It allows candidates, officeholders, and individuals who are agents acting on behalf of either to make general solicitations, without source or amount restrictions for a 501(c) organization unless the ''principal purpose'' of the organization is to conduct certain Federal election activity, specifically voter registration, voter identification, GOTV activities, or generic campaign activity, so long as the solicitation is not to obtain funds in connection with a Federal election; and (2) it permits Federal candidates and officeholders, and individuals who are agents acting on their behalf, to make a solicitation explicitly to obtain funds for a 501(c) organization whose principal purpose is to conduct Federal election activity as described above or for a 501(c) organization to conduct these activities provided that only individuals are solicited for no more than $20,000 per calendar year. The final rule at 11 CFR 300.65 implements these exceptions for Federal candidate and officeholder solicitations for 501(c) organizations. It mirrors the final rule at 11 CFR 300.52 contained in subpart C, discussed above.

In response to the NPRM, BCRA's principal sponsors and a public interest group stated that the proposed rule at 11 CFR 300.52(a)(1) (mirrored in 300.65(a)(1)) could be interpreted to prohibit candidate/officeholder solicitations that were not meant to be prohibited. The proposed rules stated that a Federal candidate or officeholder may make a general solicitation on behalf of a 501(c) organization without regard to source or amount restrictions ''only if the solicitation does not specify how the funds will or should be spent,'' if the solicitation is not for a 501(c) organization whose principal purpose is to conduct certain enumerated Federal election activity, and if the solicitation is not for that enumerated Federal election activity. These commenters expressed concern that the proposed regulation could be erroneously interpreted as prohibiting Federal candidates or officeholders from making a general or specific solicitation, without source or amount limitations, for an organization such as the Red Cross, which engages in no ''electoral activities'' whatsoever. BCRA's principal sponsors also argued that this provision could be interpreted to prohibit specific solicitations, without source or amount limitations, for a 501(c) organization whose principal purpose is not to engage in Federal election activity, but who nonetheless engages in some election activity, provided that the solicitation is not for activity in connection with an election. The sponsors argued that the final rules should permit such specific solicitations. The examples given by the sponsors to illustrate this point included a specific solicitation for the

NAACP College Fund or the NRA firearms training program, even though the NAACP and the NRA engage in certain election activity.

The Commission agrees that 11 CFR 300.65 should not be misinterpreted to prohibit candidates, officeholders, or their agents from soliciting funds for a 501(c) organization that engages in no election activity, such as the Red Cross. Accordingly, the final rule at 11 CFR 300.65 addresses the commenters' concerns by more specifically setting forth the circumstances under which Federal candidates, officeholders, and their agents can make general solicitations on behalf of 501(c) organizations, without regard to source or limitation, and by setting forth in paragraph (b) the circumstances under which they can made specific, limited solicitations to individuals to obtain funds to carry out certain Federal election activities.

In response to a question in the NRPM regarding the scope of the term ''agent'' in 2 U.S.C. 441i(e), the sponsors stated that it was their intent that the restrictions on candidate/officer holder solicitations apply to an agent ''acting on behalf of'' either. Accordingly, the final rule states throughout that it applies to an individual who is an agent ''acting on behalf of'' a Federal candidate or officeholder. BCRA's sponsors and the same public interest commenter also pointed out that proposed 11 CFR 300.52(b)(2) (mirrored in proposed 11 CFR 300.65(b)(2)) did not make clear that the specific solicitations permitted for Federal election activity or organizations principally engaged in such activities applies only to 501(c) organizations and not to other tax exempt organizations, such as section 527 organizations. The Commission agrees. Accordingly, the introductory language in the final rule specifically states that the requirements for solicitations in the rule apply to 501(c) organizations.

Paragraph (c) of the final rule enumerates the specific types of Federal election activity for which a Federal candidate or officeholder can make specific solicitations and incorporates the definitions of those activities at 11 CFR 100.24(a). Because BCRA permits limited solicitations only for specific Federal election activities, new paragraph (d) of the final rule makes clear that solicitations are not permitted for other election activities, including Federal election activity such as public communications promoting or opposing clearly identified Federal candidates. *See* 11 CFR 100.24(b)(3).

In response to questions raised in the NPRM, BCRA's principal sponsors, a public interest group, and a non-profit organization agreed that 11 CFR 300.65 should include a safe harbor provision for Federal candidates, officeholders, and their agents, similar to the one for party committees in 11 CFR 300.11 and 11 CFR 300.37. Accordingly, new paragraph (e) provides that a Federal candidate, officeholder, or agent acting on behalf of either, may obtain and rely upon a certification from a section 501(c) organization in determining the scope of the permissible solicitations they may make on behalf of the organization. Paragraph (e) also sets forth the requirements for such a certification: the certification is a written statement signed by an officer or other authorized representative of the organization with knowledge of the organization's activities; the certification states the organization's principal purpose is not to conduct election activities, including Federal election activities described in paragraph (c) of this section; and the certification states that the organization does not intend to pay debts incurred in a prior election cycle for expenditures and disbursements made in connection with an election for Federal office (including for Federal election activity).

A non-profit organization raised several concerns about the restrictions on Federal officeholders soliciting for 501(c) organizations. First, the non-profit group maintained that the regulations should create a presumption that the principal purpose of any 501(c) organization is not to conduct election activity because ''under federal tax law, no 501(c) organization may conduct partisan electoral activity as its primary purpose.'' The commenter was concerned that requiring a candidate or officeholder to verify whether or not an organization engages in election activity as its principal purpose will ''result in an unnecessary chilling effect on their assistance'' to 501(c) organizations. The commenter was also concerned that IRS Form 990 tax returns and other tax forms mentioned in the NPRM as possible ways to determine an organization's activities or principal purpose would not provide a candidate or officeholder with the necessary information. Second, the commenter urged that any definition of ''principal purpose'' be based on a multi-year average of an organization's expenditures for Federal election activity to more accurately capture an organization's actual level of electoral activity, which necessarily occurs closer to elections. Finally, the group urged that the regulations include a safe harbor permitting candidates and officeholders to appear at a Section 501(c) organization's fundraiser or convention as long as no solicitations are made for funds for election activities, or alternatively, for any funds.

Determining whether a particular organization's principal purpose is to conduct election activities, such as voter registration or GOTV, is a fact-based determination that must be made as to a particular organization. Thus, creating a presumption that the principal purpose of any 501(c) organization is not to engage in election activity is inappropriate and could conflict with IRS determinations. As for including a definition of ''principal purpose'' that is based on a multi-year average of an organization's election expenditures, the Commission lacks sufficient information to establish a particular percentage or average at this time. Finally, the Commission notes that the general and specific solicitations contemplated in 11 CFR 300.65 may take place at a fundraising event conducted by the 501(c) organization.

The Commission agrees with the commenter that IRS Form 990s may not clearly indicate whether or not an organization engages in specific election activities. Therefore, the safe harbor provision in the final rule does not require a Federal candidate or office holder to obtain or rely upon such forms.

As for the concern that Federal candidates and officeholders will be chilled from assisting 501(c) organizations in fundraising, the safe harbor provided in paragraph (e) is intended to ease concerns as to inadvertent violations of the Act, as amended by BCRA. On the other hand, new paragraph (f) of the final rules makes clear that a Federal candidate, Federal officeholder, or individual agents acting on behalf of either may not rely upon a certification obtained from an organization if the individual has actual knowledge that the certification is false. This provision is identical to the provisions applicable to party committees in 11 CFR 300.11 and 300.37.

Subpart E—State and Local Candidates

11 CFR 300.70 Scope

Subpart E implements two provisions of BCRA regarding State and local candidates. 2 U.S.C. 441i(f)(1), (2). Section 300.70 explains that this subpart applies to any candidate for State or local office, individual holding State or local office, or an agent acting on behalf of any such candidate or individual. 2 U.S.C. 441i(f)(1). For example, the subpart applies to an

individual holding Federal office who is a candidate for State or local office. It does not, however, apply to an association or similar group of candidates for State or local office, or of individuals holding State or local office, because they are not addressed in this section of BCRA. The Commission received no comments on this section.

11 CFR 300.71 Federal Funds Required for Certain Communications

BCRA prohibits State and local candidates and officeholders from funding certain public communications with non-Federal funds. 2 U.S.C. 441i(f)(1). This prohibition is contained in new 11 CFR 300.71. The prohibition on use of non-Federal funds encompasses *public communications* that refer to a clearly identified candidate for Federal office, if the communication promotes, supports, attacks, or opposes any candidate for that Federal office, regardless of whether the communication expressly advocates voting for or against any candidate. *See* 2 U.S.C. 431(20)(A)(iii). The section contains a cross reference to section 11 CFR 100.26, which defines the new term *public communication* for purposes of the Act. State and local candidates and officeholders may, however, use Federal funds for these public communications.

No commenters addressed this section.

11 CFR 300.72 Federal Funds Not Required for Certain Communications

BCRA contains an exception to the prohibition on the use of Federal funds for certain public communications that permits State and local candidates and officeholders to use non-Federal funds for public communications that refer to Federal candidates but do not promote, support, attack, or oppose any candidate for Federal office. 2 U.S.C. 441i(f)(2). This exception is set forth at new 11 CFR 300.72. Section 300.72 follows the statutory language.

XI. Part 9034—Entitlements

11 CFR 9034.8 Joint Fundraising

The ban on national party non-Federal fundraising affects the Commission's joint fundraising rules under the Presidential Primary Matching Payment Act at 11 CFR 9034.8. The Commission is, therefore, adding introductory language to this section, advising readers that ''[n]othing in this section shall supersede 11 CFR part 300, which prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities.''

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

The Commission certifies that the attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the national, State, and local party committees of the two major political parties are not small entities under 5 U.S.C. 601, and the number of other small entities to which the rules would apply is not substantial.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 102

Political committees and parties, reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, political committees and parties, reporting and recordkeeping requirements.

11 CFR Part 106

Campaign funds, political committees and parties, political candidates.

11 CFR Part 108

Elections, reporting and recordkeeping.

11 CFR Part 110

Campaigns, political parties and committees.

11 CFR Part 114

Business and industry, elections, labor.

11 CFR Part 300

Campaign funds, nonprofit organizations, political committees and parties, political candidates, reporting and recordkeeping requirements.

11 CFR Part 9034

Campaign funds, reporting and recordkeeping requirements.

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

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

1. The authority citation for 11 CFR part 100 continues to read as follows:

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

2. Section 100.14 is revised to read as follows:

§ 100.14 State committee, subordinate committee, district, or local committee (2 U.S.C. 431(15)).

(a) *State committee* means the organization that by virtue of the bylaws of a political party or the operation of State law is part of the official party structure and is responsible for the day-to-day operation of the political party at the State level, including an entity that is directly or indirectly established, financed, maintained, or controlled by that organization, as determined by the Commission.

(b) *District or local committee* means any organization that by virtue of the bylaws of a political party or the operation of State law is part of the official party structure, and is responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State.

(c) *Subordinate committee of a State, district, or local committee* means any organization that at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State or any organization under the control or direction of the State committee, and is directly or indirectly established, financed, maintained, or controlled by the State, district, or local committee.

3. Sections 100.24, 100.25, 100.26, 100.27, and 100.28 are added to read as follows:

§ 100.24 Federal election activity (2 U.S.C. 431(20)).

(a) As used in this section, and in part 300 of this chapter,

(1) *In connection with an election in which a candidate for Federal office appears on the ballot* means:

(i) The period of time beginning on the date of the earliest filing deadline for access to the primary election ballot for Federal candidates as determined by State law, or in those States that do not conduct primaries, on January 1 of each even-numbered year and ending on the date of the general election, up to and including the date of any general runoff.

(ii) In an odd-numbered year, the period beginning on the date on which the date of a special election in which a candidate for Federal office appears on the ballot is set and ending on the date of the special election.

(2) *Voter registration activity* means contacting individuals by telephone, in person, or by other individualized means to assist them in registering to vote. Voter registration activity

includes, but is not limited to, printing and distributing registration and voting information, providing individuals with voter registration forms, and assisting individuals in the completion and filing of such forms.

(3) *Get-out-the-vote activity* means contacting registered voters by telephone, in person, or by other individualized means, to assist them in engaging in the act of voting. Get-out-the-vote activity shall not include any communication by an association or similar group of candidates for State or local office or of individuals holding State or local office if such communication refers only to one or more State or local candidates. Get-out-the-vote activity includes, but is not limited to:

(i) Providing to individual voters, within 72 hours of an election, information such as the date of the election, the times when polling places are open, and the location of particular polling places; and

(ii) Offering to transport or actually transporting voters to the polls.

(4) *Voter identification* means creating or enhancing voter lists by verifying or adding information about the voters' likelihood of voting in an upcoming election or their likelihood of voting for specific candidates. This paragraph shall not apply to an association or similar group of candidates for State or local office or of individuals holding State or local office if the association or group engages in voter identification that refers only to one or more State or local candidates.

(b) As used in part 300 of this chapter, *Federal election activity* means any of the activities described in paragraphs (b)(1) through (b)(4) of this section.

(1) Voter registration activity during the period that begins on the date that is 120 calendar days before the date that a regularly scheduled Federal election is held and ends on the date of the election. For purposes of voter registration activity, the term ''election'' does not include any special election.

(2) The following activities conducted in connection with an election in which one or more candidates for Federal office appears on the ballot (regardless of whether one or more candidates for State or local office also appears on the ballot):

(i) Voter identification.

(ii) Generic campaign activity, as defined in 11 CFR 100.25.

(iii) Get-out-the-vote activity.

(3) A public communication that refers to a clearly identified candidate for Federal office, regardless of whether a candidate for State or local election is also mentioned or identified, and that promotes or supports, or attacks or opposes any candidate for Federal office. This paragraph applies whether or not the communication expressly advocates a vote for or against a Federal candidate.

(4) Services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election.

(c) *Exceptions. Federal election activity* does not include any amount expended or disbursed by a State, district, or local committee of a political party for any of the following activities:

(1) A public communication that refers solely to one or more clearly identified candidates for State or local office and that does not promote or support, or attack or oppose a clearly identified candidate for Federal office; provided, however, that such a public communication shall be considered a Federal election activity if it constitutes voter registration activity, generic campaign activity, get-out-the-vote activity, or voter identification.

(2) A contribution to a candidate for State or local office, provided the contribution is not designated to pay for voter registration activity, voter identification, generic campaign activity, get-out-the-vote activity, a public communication, or employee services as set forth in paragraphs (a)(1) through (4) of this section.

(3) The costs of a State, district, or local political convention, meeting or conference.

(4) The costs of grassroots campaign materials, including buttons, bumper stickers, handbills, brochures, posters, and yard signs, that name or depict only candidates for State or local office.

§ 100.25 Generic campaign activity (2 U.S.C. 431(21)).

Generic campaign activity means a public communication that promotes or opposes a political party and does not promote or oppose a clearly identified Federal candidate or a non-Federal candidate.

§ 100.26 Public communication (2 U.S.C. 431(22)).

Public communication means a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising. The term public communication shall not include communications over the Internet.

§ 100.27 Mass mailing (2 U.S.C. 431(23)).

Mass mailing means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. A mass mailing does not include electronic mail or Internet communications. For purposes of this section, *substantially similar* includes communications that include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient's name, occupation, or geographic location.

§ 100.28 Telephone bank (2 U.S.C. 431(24)).

Telephone bank means more than 500 telephone calls of an identical or substantially similar nature within any 30-day period. A telephone bank does not include electronic mail or Internet communications transmitted over telephone lines. For purposes of this section, *substantially similar* includes communications that include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient's name, occupation, or geographic location.

4. Sections 100.29 through 100.50 are added and reserved.

5. Sections 100.1 through 100.50 are designated as subpart A—General Definitions.

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

6. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

7. Section 102.5 is revised to read as follows:

§ 102.5 Organizations financing political activity in connection with Federal and non-Federal elections, other than through transfers and joint fundraisers: Accounts and Accounting.

(a) *Organizations that are political committees under the Act, other than national party committees.*

(1) Each organization, including a State, district, or local party committee, that finances political activity in connection with both Federal and non-Federal elections and that qualifies as a political committee under 11 CFR 100.5 shall either:

(i) Establish a separate Federal account in a depository in accordance with 11 CFR part 103. Such account shall be treated as a separate Federal

political committee that must comply with the requirements of the Act including the registration and reporting requirements of 11 CFR parts 102 and 104. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate Federal account. *See* 11 CFR 103.3. All disbursements, contributions, expenditures, and transfers by the committee in connection with any Federal election shall be made from its Federal account, except as otherwise permitted for State, district, and local party committees by 11 CFR part 300 and paragraph (a)(5) of this section. No transfers may be made to such Federal account from any other account(s) maintained by such organization for the purpose of financing activity in connection with non-Federal elections, except as provided by 11 CFR 300.33, 300.34, 106.6(c), and 106.7(f). Administrative expenses for political committees other than party committees shall be allocated pursuant to 11 CFR 106.6 between such Federal account and any other account maintained by such committee for the purpose of financing activity in connection with non-Federal elections. Administrative expenses for State, district, and local party committees are subject to 11 CFR 106.7 and 11 CFR part 300; or

(ii) Establish a political committee that shall receive only contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with Federal or non-Federal elections. Such organization shall register as a political committee and comply with the requirements of the Act.

(2) Only contributions meeting any of the conditions set forth in paragraphs (a)(2)(i), (ii), or (iii) of this section may be deposited in a Federal account established under paragraph (a)(1)(i) of this section, see 11 CFR 103.3, or may be received by a political committee established under paragraph (a)(1)(ii) of this section:

(i) Contributions designated for the Federal account;

(ii) Contributions that result from a solicitation which expressly states that the contribution will be used in connection with a Federal election; or

(iii) Contributions from contributors who are informed that all contributions are subject to the prohibitions and limitations of the Act.

(3) State, district, and local party committees that intend to expend Levin funds raised pursuant to 11 CFR 300.31 for activities identified in 11 CFR 300.32(b)(1) must either:

(i) Establish one or more separate Levin accounts pursuant to 11 CFR 300.30(c)(2); or

(ii) Demonstrate through a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) that whenever such organization makes a payment that organization has received sufficient funds subject to the limitations and prohibitions of the Act or the requirements of 11 CFR 300.30(c)(1) or (3) to make such payment. Such organization shall keep records of amounts received or expended under this paragraph and, upon request, shall make such records available for examination by the Commission.

(4) Solicitations by Federal candidates and Federal officeholders for State, district, and local party committees are subject to the restrictions in 11 CFR 300.31(e) and 11 CFR part 300, subpart D.

(5) State, district, and local party committees and organizations may establish one or more separate allocation accounts to be used for activities allocable pursuant to 11 CFR 106.7 and 11 CFR 300.33.

(b) *Organizations that are not political committees under the Act.*

(1) Any organization that makes contributions, expenditures, and exempted payments under 11 CFR 100.7(b)(9), (15) and (17) and 11 CFR 100.8(b)(10), (16) and (18), but that does not qualify as a political committee under 11 CFR 100.5, must keep records of receipts and disbursements and, upon request, must make such records available for examination by the Commission. The organization must demonstrate through a reasonable accounting method that, whenever such an organization makes a contribution or expenditure, or payment, the organization has received sufficient funds subject to the limitations and prohibitions of the Act to make such contribution, expenditure, or payment.

(2) Any State, district, or local party organization that makes payments for certain Federal election activities under 11 CFR 300.32(b) must either:

(i) Establish one or more Levin accounts pursuant to 11 CFR 300.30(b) into which only funds solicited pursuant to 11 CFR 300.31 may be deposited and from which payments must be made pursuant to 11 CFR 300.32 and 300.33. See 11 CFR 300.30(c)(2)(i); or

(ii) Demonstrate through a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) that whenever such organization makes a payment that organization has received sufficient funds subject to the limitations and prohibitions of the Act or the requirements of 11 CFR 300.31 to make such payment. Such organization shall keep records of amounts received or expended under this paragraph and, upon request, shall make such records available for examination by the Commission. See 11 CFR 300.30(c)(2)(ii).

(3) All such party organizations shall keep records of deposits to and disbursements from such Federal and Levin accounts, and upon request, shall make such records available for examination by the Commission.

(c) *National party committees.* Between November 6, 2002, and December 31, 2002, paragraphs (a) and (b) of this section apply to national party committees. After December 31, 2002, national party committees are prohibited from raising and spending non-Federal funds. Therefore, this section does not apply to national party committees after December 31, 2002.

8. Section 102.17 is amended by adding introductory language to paragraph (a) to read as follows:

§ 102.17 Joint fundraising by committees other than separate segregated funds.

(a) *General.* Nothing in this section shall supersede 11 CFR part 300, which prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities.

* * * * *

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

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

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

10. Section 104.8 is amended by revising paragraphs (e) and (f) to read as follows:

§ 104.8 Uniform reporting of receipts.

* * * * *

(e) For reports covering activity on or before December 31, 2002, national party committees shall disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of $200 in a calendar year to the committee's non-Federal account(s). This information shall include the donating individual's or entity's name,

mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.

(f) For reports covering activity on or before December 31, 2002, national party committees shall also disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of $200 in a calendar year to the committee's building fund account(s). This information shall include the donating individual's or entity's name, mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.

11. Section 104.9 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 104.9 Uniform reporting of disbursements.

* * * * *

(c) For reports covering activity on or before March 31, 2003, national party committees shall report in a memo Schedule B the full name and mailing address of each person to whom a disbursement in an aggregate amount or value in excess of $200 within the calendar year is made from the committee's non-Federal account(s), together with the date, amount, and purpose of such disbursement, in accordance with paragraph (b) of this section. As used in this section, *purpose* means a brief statement or description as to the reasons for the disbursement. *See* 11 CFR 104.3(b)(3)(i)(A).

(d) For reports covering activity on or before March 31, 2003, national party committees shall report in a memo Schedule B the full name and mailing address of each person to whom a disbursement in an aggregate amount or value in excess of $200 within the calendar year is made from the committee's building fund account(s), together with the date, amount, and purpose of such disbursement, in accordance with paragraph (b) of this section. As used in this section, *purpose* means a brief statement or description as to the reasons for the disbursement. *See* 11 CFR 104.3(b)(3)(i)(A).

(e) For reports covering activity on or before December 31, 2002, national party committees shall report in a memo Schedule B each transfer from their non-Federal account(s) to the non-Federal accounts of a State or local party committee.

12. Section 104.10 is revised to read as follows:

§ 104.10 Reporting by separate segregated funds and nonconnected committees of expenses allocated among candidates and activities.

(a) *Expenses allocated among candidates.* A political committee that is a separate segregated fund or a nonconnected committee making an expenditure on behalf of more than one clearly identified candidate for Federal office shall allocate the expenditure among the candidates pursuant to 11 CFR part 106. Payments involving both expenditures on behalf of one or more clearly identified Federal candidates and disbursements on behalf of one or more clearly identified non-Federal candidates shall also be allocated pursuant to 11 CFR part 106. For allocated expenditures, the committee shall report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each Federal candidate. If a payment also includes amounts attributable to one or more non-Federal candidates, and is made by a political committee with separate Federal and non-Federal accounts, then the payment shall be made according to the procedures set forth in 11 CFR 106.6(e), but shall be reported pursuant to paragraphs (a)(1) through (a)(4) of this section, as follows:

(1) *Reporting of allocation of expenses attributable to specific Federal and non-Federal candidates.* In each report disclosing a payment that includes both expenditures on behalf of one or more Federal candidates and disbursements on behalf of one or more non-Federal candidates, the committee shall assign a unique identifying title or code to each program or activity conducted on behalf of such candidates, shall state the allocation ratio calculated for the program or activity, and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts attributed to each candidate, to date, for each joint program or activity.

(2) *Reporting of transfers between accounts for the purpose of paying expenses attributable to specific Federal and non-Federal candidates.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall report each transfer of funds from its non-Federal account to its Federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one program or activity, the committee shall itemize the transfer, showing the amounts designated for each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates.

(3) *Reporting of allocated disbursements attributable to specific Federal and non-Federal candidates.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall also report each disbursement from its Federal account or its separate allocation account in payment for a program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount, and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one program or activity, the committee shall itemize the disbursement, showing the amounts designated for payment of each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. The committee shall also report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each Federal candidate, and the total amount attributed to the non-Federal candidate(s). In addition, the committee shall report the total amount expended by the committee that year, to date, for each joint program or activity.

(4) *Recordkeeping.* The treasurer shall retain all documents supporting the committee's allocation on behalf of specific Federal and non-Federal candidates, in accordance with 11 CFR 104.14.

(b) *Expenses allocated among activities.* A political committee that is a separate segregated fund or a nonconnected committee and that has established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate between those accounts its administrative expenses and its costs for fundraising and generic voter drives according to 11 CFR 106.6, and shall report those allocations according to paragraphs (b)(1) through (5) of this section, as follows:

(1) *Reporting of allocation of administrative expenses and costs of generic voter drives.*

(i) In the first report in a calendar year disclosing a disbursement for administrative expenses or generic voter drives, as described in 11 CFR 106.6(b), the committee shall state the allocation ratio to be applied to these categories of activity according to 11 CFR 106.6(c), and the manner in which it was derived.

(ii) In each subsequent report in the calendar year itemizing an allocated disbursement for administrative expenses or generic voter drives:

(A) The committee shall state the category of activity for which each allocated disbursement was made, and shall summarize the total amount spent by the Federal and non-Federal accounts that year, to date, for each such category.

(B) The committees shall also report in a memo entry the total amounts expended in donations and direct disbursements on behalf of specific State and local candidates, to date, in that calendar year.

(2) *Reporting of allocation of the direct costs of fundraising.* In each report disclosing a disbursement for the direct costs of a fundraising program, as described in 11 CFR 106.6(b), the committee shall assign a unique identifying title or code to each such program or activity, shall state the allocation ratio calculated for the program or activity according to 11 CFR 106.6(d), and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts spent by the Federal and non-Federal accounts that year, to date, for each such program or activity.

(3) *Reporting of transfers between accounts for the purpose of paying allocable expenses.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall report each transfer of funds from its non-Federal account to its Federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one activity, the committee shall itemize the transfer, showing the amounts designated for administrative expenses and generic voter drives, and for each fundraising program, as described in 11 CFR 106.6(b).

(4) *Reporting of allocated disbursements.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall also report each disbursement from its Federal account or its separate allocation account in payment for a joint Federal and non-Federal expense or activity. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount, and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one activity, the committee shall itemize the disbursement, showing the amounts designated for payment of administrative expenses and generic voter drives, and for each fundraising program, as described in 11 CFR 106.6(b). The committee shall also report the total amount expended by the committee that year, to date, for each category of activity.

(5) *Recordkeeping.* The treasurer shall retain all documents supporting the committee's allocated disbursements for three years, in accordance with 11 CFR 104.14.

13. Part 104 is amended by adding § 104.17 to read as follows:

§ 104.17 Reporting of allocable expenses by party committees.

(a) *Expenses allocated among candidates.* A national party committee making an expenditure on behalf of more than one clearly identified candidate for Federal office must report the allocation between or among the named candidates. A national party committee making expenditures and disbursements on behalf of one or more clearly identified Federal candidates and on behalf of one or more clearly identified non-Federal candidates must report the allocation among all named candidates. These payments shall be allocated among candidates pursuant to 11 CFR part 106, but only Federal funds may be used for such payments. A State, district, or local party committee making expenditures and disbursements for Federal election activity as defined at 11 CFR 100.24 on behalf of one or more clearly identified Federal and one or more clearly identified non-Federal candidates must make the payments from its Federal account and must report the allocation among all named candidates. A State, district, or local party committee making expenditures and disbursements on behalf of one or more clearly identified Federal and one or more clearly identified non-Federal candidates where the activity is not a Federal election activity may allocate the payments between its Federal and non-Federal account and must report the allocation among all named candidates. For allocated expenditures, the committee must report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each candidate. If a payment also includes amounts attributable to one or more non-Federal candidates, and is made by a State, district, or local party committee with separate Federal and non-Federal accounts, and is not for a Federal election activity, then the payment shall be made according to the procedures set forth in 11 CFR 106.7(f), but shall be reported pursuant to paragraphs (a)(1) through (a)(4) of this section, as follows:

(1) *Reporting of allocation of expenses attributable to specific Federal and non-Federal candidates.* In each report disclosing a payment that includes both expenditures on behalf of one or more Federal candidates and disbursements on behalf of one or more non-Federal candidates, the committee must assign a unique identifying title or code to each program or activity conducted on behalf of such candidates, state the allocation ratio calculated for the program or activity, and explain the manner in which the ratio applied to each candidate was derived. The committee must also summarize the total amounts attributed to each candidate, to date, for each program or activity.

(2) *Reporting of transfers between accounts for the purpose of paying expenses attributable to specific Federal and non-Federal candidates.* A State, district, or local party committee that pays allocable expenses in accordance with 11 CFR 106.7(f) shall report each transfer of funds from its non-Federal account to its Federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the State, district, or local party committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one

program or activity, the State, district, or local party committee must itemize the transfer, showing the amounts designated for each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates.

(3) *Reporting of allocated disbursements attributable to specific Federal and non-Federal candidates.* A State, district, or local committee that pays allocable expenses in accordance with 11 CFR 106.7(f) shall also report each disbursement from its Federal account or its separate allocation account in payment for a program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. In the report covering the period in which the disbursement occurred, the State, district, or local party committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount, and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one program or activity, the committee shall itemize the disbursement, showing the amounts designated for payment of each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. The State, district, or local party committee must also report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each Federal candidate, and the total amount attributed to the non-Federal candidate(s). In addition, the State, district, or local party committee must report the total amount expended by the committee that year, to date, for each joint program or activity.

(4) *Recordkeeping.* The treasurer of a State, district, or local party committee must retain all documents supporting the committee's allocations on behalf of specific Federal and non-Federal candidates, in accordance with 11 CFR 104.14.

(b) *Allocation of activities that are not Federal election activities.* A State, district, or local committee of a political party that has established separate Federal and non-Federal accounts, including related allocation accounts, under 11 CFR 102.5 must report all payments that are allocable between these accounts pursuant to the allocation rules in 11 CFR 106.7. Disbursements for activities that are allocable between Federal and Levin accounts, including related allocation accounts, must be reported pursuant to 11 CFR 300.36.

(1) *Reporting of allocations of expenses for activities that are not Federal election activities.*

(i) In the first report in a calendar year disclosing a disbursement allocable pursuant to 11 CFR 106.7, a State, district, or local committee shall state and explain the allocation percentages to be applied to each category of allocable activity (e.g., 36% Federal/64% non-Federal in Presidential and Senate election years) pursuant to 11 CFR 106.7(d).

(ii) In each subsequent report in the calendar year itemizing an allocated disbursement, the State, district, or local party committee shall state the category of activity for which each allocated disbursement was made, and shall summarize the total amounts expended from Federal and non-Federal accounts, or from allocation accounts, that year to date for each such category.

(iii) In each report disclosing disbursements for allocable activities as described in 11 CFR 106.7, the State, district, or local party committee shall assign a unique identifying title or code to each such program or activity, and shall state the applicable Federal/non-Federal percentage for any direct costs of fundraising. Unique identifying titles or codes are not required for salaries and wages pursuant to 11 CFR 106.7(c)(1), or for other administrative costs allocated pursuant to 11 CFR 106.7(c)(2).

(2) *Reporting of transfers between the accounts of State, district, and local party committees and into allocation accounts for allocable expenses.* A State, district, or local committee of a political party that pays allocable expenses in accordance with 11 CFR 106.7 shall report each transfer of funds from its non-Federal account to its Federal account, or each transfer from its Federal account and its non-Federal account into an allocation account, for the purpose of payment of such expenses. In the report covering the period in which each transfer occurred, the State, district, or local party committee must explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one activity, the State, district, or local party committee must itemize the transfer, showing the amounts designated for each category of expense as described in 11 CFR 106.7.

(3) *Reporting of allocated disbursements for certain allocable activity that is not Federal election activity.*

(i) A State, district, or local committee of a political party that pays allocable expenses in accordance with 11 CFR 106.7 shall report each disbursement from its Federal account for allocable expenses, or each payment from an allocation account for such activity. In the report covering the period in which the disbursement occurred, the State, district, or local committee shall state the full name and address of each individual or vendor to which the disbursement was made, the date, amount, and purpose of each such disbursement, and the amounts allocated to Federal and non-Federal portions of the allocable activity. If the disbursement includes payment for the allocable costs of more than one activity, the State, district, or local party committee must itemize the disbursement, showing the amounts designated for payments of particular categories of activity as described in 11 CFR 106.7. The State, district, or local party committee must also report the total amount paid that calendar year to date for each category of allocable activity.

(ii) A State, district, or local committee of a political party that pays allocable expenses from a Federal account and a Levin account in accordance with 11 CFR 300.33 shall report disbursements from those accounts according to the requirements of 11 CFR 300.36.

(4) *Recordkeeping.* The treasurer of a State, district, or local party committee must retain all documents supporting the committee's allocations of expenditures and disbursements for the costs and activities cited at paragraph (b) of this section, in accordance with 11 CFR 104.14.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

14. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

15. Section 106.1 is amended by revising paragraphs (a)(1), (a)(2), and (e) to read as follows:

§ 106.1 Allocation of expenses between candidates.

(a) *General rule.*

(1) Expenditures, including in-kind contributions, independent expenditures, and coordinated expenditures made on behalf of more than one clearly identified Federal candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived. For

example, in the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates. In the case of a fundraising program or event where funds are collected by one committee for more than one clearly identified candidate, the attribution shall be determined by the proportion of funds received by each candidate as compared to the total receipts by all candidates. In the case of a phone bank, the attribution shall be determined by the number of questions or statements devoted to each candidate as compared to the total number of questions or statements devoted to all candidates. These methods shall also be used to allocate payments involving both expenditures on behalf of one or more clearly identified Federal candidates and disbursements on behalf of one or more clearly identified non-Federal candidates.

(2) An expenditure made on behalf of more than one clearly identified Federal candidate shall be reported pursuant to 11 CFR 104.10(a) or 104.17(a), as appropriate. A payment that also includes amounts attributable to one or more non-Federal candidates, and that is made by a political committee with separate Federal and non-Federal accounts, shall be made according to the procedures set forth in 11 CFR 106.6(e) or 106.7(f), but shall be reported pursuant to 11 CFR 104.10(a) or 104.17(a). If a State, district, or local party committee's payment on behalf of both a Federal candidate and a non-Federal candidate is for a Federal election activity, only Federal funds may be used for the entire payment. For Federal election activities, the provisions of 11 CFR 300.33 and 104.17(a) will apply to payments attributable to candidates.

* * * * *

(e) State, district, and local party committees, separate segregated funds, and nonconnected committees that make mixed Federal/non-Federal payments for activities other than an activity entailing an expenditure for a Federal candidate and disbursement for a non-Federal candidate, or that make mixed Federal/Levin fund payments, shall allocate those expenses in accordance with 11 CFR 106.6, 106.7, or 300.33, as appropriate.

16. Section 106.5 is revised to read as follows:

§ 106.5 Allocation of expenses between federal and non-federal activities by national party committees.

(a) *General rules.*

(1) *Disbursements from Federal and non-Federal accounts.* National party committees that make disbursements in connection with Federal and non-Federal elections shall make those disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5. Political committees that have established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate expenses between those accounts according to this section. Organizations that are not political committees but have established separate Federal and non-Federal accounts under 11 CFR 102.5(b)(1)(i), or that make Federal and non-Federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii), shall also allocate their Federal and non-Federal expenses according to this section. This section covers:

(i) General rules regarding allocation of Federal and non-Federal expenses by party committees;

(ii) Percentages to be allocated for administrative expenses and costs of generic voter drives by national party committees;

(iii) Methods for allocation of administrative expenses, costs of generic voter drives, and of fundraising costs by national party committees; and

(iv) Procedures for payment of allocable expenses. Requirements for reporting of allocated disbursements are set forth in 11 CFR 104.10.

(2) *Costs to be allocated.* National party committees that make disbursements in connection with Federal and non-Federal elections shall allocate expenses according to this section for the following categories of activity:

(i) Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate;

(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where Federal and non-Federal funds are collected by one committee through such program or event; and

(iii) [Removed and reserved]

(iv) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(b) *National party committees other than Senate or House campaign committees; fixed percentages for allocating administrative expenses and costs of generic voter drives.*

(1) *General rule.* Each national party committee other than a Senate or House campaign committee shall allocate a fixed percentage of its administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, to its Federal and non-Federal account(s) each year. These percentages shall differ according to whether or not the allocable expenses were incurred in a presidential election year. Such committees shall allocate the costs of each combined Federal and non-Federal fundraising program or event according to paragraph (f) of this section, with no fixed percentages required.

(2) *Fixed percentages according to type of election year.* National party committees other than the Senate or House campaign committees shall allocate their administrative expenses and costs of generic voter drives according to paragraphs (b)(2) (i) and (ii) as follows:

(i) *Presidential election years.* In presidential election years, national party committees other than the Senate or House campaign committees shall allocate to their Federal accounts at least 65% each of their administrative expenses and costs of generic voter drives.

(ii) *Non-presidential election years.* In all years other than presidential election years, national party committees other than the Senate or House campaign committees shall allocate to their Federal accounts at least 60% each of their administrative expenses and costs of generic voter drives.

(c) *Senate and House campaign committees of a national party; method and minimum Federal percentage for allocating administrative expenses and costs of generic voter drives.*

(1) *Method for allocating administrative expenses and costs of generic voter drives.* Subject to the minimum percentage set forth in paragraph (c)(2) of this section, each Senate or House campaign committee of a national party shall allocate its administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, according to the funds expended method, described in paragraphs (c)(1)(i) and (ii) as follows:

(i) Under this method, expenses shall be allocated based on the ratio of Federal expenditures to total Federal and non-Federal disbursements made by the committee during the two-year

Federal election cycle. This ratio shall be estimated and reported at the beginning of each Federal election cycle, based upon the committee's Federal and non-Federal disbursements in a prior comparable Federal election cycle or upon the committee's reasonable prediction of its disbursements for the coming two years. In calculating its Federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific federal candidates. Calculation of total Federal and non-Federal disbursements shall also be limited to disbursements for specific candidates, and shall not include overhead or other generic costs.

(ii) On each of its periodic reports, the committee shall adjust its allocation ratio to reconcile it with the ratio of actual Federal and non-Federal disbursements made, to date. If the non-Federal account has paid more than its allocable share, the committee shall transfer funds from its Federal to its non-Federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers on its periodic reports, submitted pursuant to 11 CFR 104.5.

(2) *Minimum Federal percentage for administrative expenses and costs of generic voter drives.* Regardless of the allocation ratio calculated under paragraph (c)(1) of this section, each Senate or House campaign committee of a national party shall allocate to its Federal account at least 65% each of its administrative expenses and costs of generic voter drives each year. If the committee's own allocation calculation under paragraph (c)(1) of this section yields a Federal share greater than 65%, then the higher percentage shall be applied. If such calculation yields a Federal share lower than 65%, then the committee shall report its calculated ratio according to 11 CFR 104.10(b), and shall apply the required minimum Federal percentage.

(3) *Allocation of fundraising costs.* Senate and House campaign committees shall allocate the costs of each combined Federal and non-Federal fundraising program or event according to paragraph (f) of this section, with no minimum percentages required.

(d) [Reserved].

(e) [Reserved].

(f) *National party committees; method for allocating direct costs of fundraising.*

(1) If Federal and non-Federal funds are collected by one committee through a joint activity, that committee shall allocate its direct costs of fundraising, as described in paragraph (a)(2) of this section, according to the funds received method. Under this method, the committee shall allocate its fundraising costs based on the ratio of funds received into its Federal account to its total receipts from each fundraising program or event. This ratio shall be estimated prior to each such program or event based upon the committee's reasonable prediction of its Federal and non-Federal revenue from that program or event, and shall be noted in the committee's report for the period in which the first disbursement for such program or event occurred, submitted pursuant 11 CFR 104.5. Any disbursements for fundraising costs made prior to the actual program or event shall be allocated according to this estimated ratio.

(2) No later than the date 60 days after each fundraising program or event from which both Federal and non-Federal funds are collected, the committee shall adjust the allocation ratio for that program or event to reflect the actual ratio of funds received. If the non-Federal account has paid more than its allocable share, the committee shall transfer funds from its Federal to its non-Federal account, as necessary, to reflect the adjusted allocation ratio. If the Federal account has paid more than its allocable share, the committee shall make any transfers of funds from its non-federal to its federal account to reflect the adjusted allocation ratio within the 60-day time period established by this paragraph. The committee shall make note of any such adjustments and transfers in its report for any period in which a transfer was made, and shall also report the date of the fundraising program or event that serves as the basis for the transfer. In the case of a telemarketing or direct mail campaign, the date for purposes of this paragraph is the last day of the telemarketing campaign, or the day on which the final direct mail solicitations are mailed.

(g) *Payment of allocable expenses by committees with separate Federal and non-Federal accounts.*

(1) *Payment options.* Committees that have established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) or (b)(1)(i) shall pay the expenses of joint Federal and non-Federal activities described in paragraph (a)(2) of this section according to either paragraph (g)(1)(i) or (ii), as follows:

(i) *Payment by Federal account; transfers from non-Federal account to Federal account.* The committee shall pay the entire amount of an allocable expense from its Federal account and shall transfer funds from its non-Federal account to its Federal account solely to cover the non-Federal share of that allocable expense.

(ii) *Payment by separate allocation account; transfers from Federal and non-Federal accounts to allocation account.*

(A) The committee shall establish a separate allocation account into which funds from its Federal and non-Federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint Federal and non-Federal activities. Once a committee has established a separate allocation account for this purpose, all allocable expenses shall be paid from that account for as long as the account is maintained.

(B) The committee shall transfer funds from its Federal and non-Federal accounts to its allocation account in amounts proportionate to the Federal or non-Federal share of each allocable expense.

(C) No funds contained in the allocation account may be transferred to any other account maintained by the committee.

(2) *Timing of transfers between accounts.*

(i) Under either payment option described in paragraphs (g)(1)(i) or (ii) of this section, the committee shall transfer funds from its non-Federal account to its Federal account or from its Federal and non-Federal accounts to its separate allocation account following determination of the final cost of each joint Federal and non-Federal activity, or in advance of such determination if advance payment is required by the vendor and if such payment is based on a reasonable estimate of the activity's final cost as determined by the committee and the vendor(s) involved.

(ii) Funds transferred from a committee's non-Federal account to its Federal account or its allocation account are subject to the following requirements:

(A) For each such transfer, the committee must itemize in its reports the allocable activities for which the transferred funds are intended to pay, as required by 11 CFR 104.10(b)(3); and

(B) Except as provided in paragraph (f)(2) of this section, such funds may not be transferred more than 10 days before or more than 60 days after the payments for which they are designated are made.

(iii) Any portion of a transfer from a committee's non-Federal account to its Federal account or its allocation account that does not meet the requirements of paragraph (g)(2)(ii) of this section shall be presumed to be a loan or contribution from the non-Federal account to a Federal account, in violation of the Act.

(3) *Reporting transfers of funds and allocated disbursements.* A political committee that transfers funds between accounts and pays allocable expenses according to this section shall report each such transfer and disbursement pursuant to 11 CFR 104.10(b).

(h) *Sunset provision.* This section applies from November 6, 2002, to December 31, 2002. After December 31, 2002, *see* 11 CFR 106.7(a).

17. Section 106.7 is added to part 106 to read as follows:

§ 106.7 Allocation of expenses between Federal and non-Federal accounts by party committees, other than for Federal election activities.

(a) National party committees are prohibited from raising or spending non-Federal funds. Therefore, these committees shall not allocate expenditures and disbursements between Federal and non-Federal accounts. All disbursements by a national party committee must be made from a Federal account.

(b) State, district, and local party committees that make expenditures and disbursements in connection with both Federal and non-Federal elections for activities that are not Federal election activities pursuant to 11 CFR 100.24 may use only funds subject to the prohibitions and limitations of the Act, or they may allocate such expenditures and disbursements between their Federal and their non-Federal accounts. State, district, and local party committees that are political committees that have established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate expenses between those accounts according to paragraphs (c) and (d) of this section. Party organizations that are not political committees but have established separate Federal and non-Federal accounts, or that make Federal and non-Federal disbursements from a single account, shall also allocate their Federal and non-Federal expenses according to paragraphs (c) and (d) of this section. In lieu of establishing separate accounts, party organizations that are not political committees may choose to use a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) pursuant to 11 CFR 102.5 and 300.30.

(c) *Costs allocable by State, district, and local party committees between Federal and non-Federal accounts.*

(1) *Salaries and wages.* State, district, and local party committees must pay salaries and wages from funds that comply with State law for employees who spend 25% or less of their time in any given month on Federal election activity or activity in connection with a Federal election. *See* 11 CFR 300.33(c)(2).

(2) *Administrative costs.* State, district, and local party committees may either pay administrative costs, including rent, utilities, office equipment, office supplies, postage for other than mass mailings, and routine building maintenance, upkeep and repair, from their Federal account, or allocate such expenses between their Federal and non-Federal accounts, except that any such expenses directly attributable to a clearly identified Federal candidate must be paid only from the Federal account.

(3) *Exempt party activities that are not Federal election activities.* State, district, and local party committees may pay expenses for party activities that are exempt from the definitions of contribution and expenditure under 11 CFR 100.7(b)(9), (15), or (17), and 100.8(b)(10), (16), or (18), that are conducted in conjunction with non-Federal activity, and that are not Federal election activities pursuant to 11 CFR 100.24, from their Federal accounts, or may allocate these expenses between their Federal and non-Federal accounts.

(4) *Certain fundraising costs.* State, district, and local party committees may allocate the direct costs of certain fundraising programs or events between their Federal and non-Federal accounts provided that none of the proceeds from the activities or events will ever be used for Federal election activities. The proceeds of fundraising allocated pursuant to this paragraph must be segregated in bank accounts that are never used for Federal election activity. Direct costs of fundraising include disbursements for the planning and administration of specific fundraising events or programs.

(5) *Voter-drive activities that do not qualify as Federal election activities and that are not party exempt activities.* Other than for salaries and wages as described in paragraph (c)(1) of this section, expenses for voter identification, voter registration, and get-out-the-vote drives, and any other activities that urge the general public to register or vote, or that promote or oppose a political party, without promoting or opposing a candidate or non-Federal candidate, that do not qualify as Federal election activities and that are not exempt party activities, must be paid with Federal funds or may be allocated between the committee's Federal and non-Federal accounts.

(d) *Allocation percentages, ratios, and record-keeping.*

(1) *Salaries and wages.* Committees must keep a monthly log of the percentage of time each employee spends in connection with a Federal election. Allocations of salaries and wages shall be undertaken as follows:

(i) Salaries and wages paid for employees who spend 25% or less of their compensated time in a given month on Federal election activities or on activities in connection with a Federal election shall be paid from funds that comply with State law.

(ii) Salaries and wages paid for employees who spend more than 25% of their compensated time in a given month on Federal election activities or on activities in connection with a Federal election must be paid only from a Federal account. *See* 11 CFR 300.33(c)(2), and paragraph (e)(2) of this section.

(2) *Administrative costs.* State, district, and local party committees that choose to allocate administrative expenses may do so subject to the following requirements:

(i) *Presidential election years.* In any even year in which a Presidential candidate, but no Senate candidate appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 28% of administrative expenses to their Federal accounts.

(ii) *Presidential and Senate election year.* In any even year in which a Presidential candidate and a Senate candidate appear on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 36% of administrative expenses to their Federal accounts.

(iii) *Senate election year.* In any even year in which a Senate candidate, but no Presidential candidate, appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 21% of administrative expenses to their Federal account.

(iv) *Non-Presidential and non-Senate year.* In any even year in which neither a Presidential nor a Senate candidate appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 15% of administrative expenses to their Federal account.

(3) *Exempt party activities and voter drive activities that are not Federal election activities.* State, district, and local party committees that choose to allocate expenses for exempt activities conducted in conjunction with non-Federal activities and voter drive activities, that are not Federal election activities, must do so subject to the following requirements:

(i) *Presidential election years.* In any even year in which a Presidential candidate, but no Senate candidate appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 28% of these expenses to their Federal accounts.

(ii) *Presidential and Senate election year.* In any even year in which a Presidential candidate and a Senate candidate appear on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 36% of these expenses to their Federal accounts.

(iii) *Senate election year.* In any even year in which a Senate candidate, but no Presidential candidate, appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 21% of these expenses to their Federal account.

(iv) *Non-Presidential and non-Senate year.* In any even year in which neither a Presidential nor a Senate candidate appears on the ballot, and in the preceding year, State, district, and local party committee must allocate at least 15% of these expenses to their Federal account.

(4) *Fundraising for Federal and non-Federal accounts.* If Federal and non-Federal funds are collected by a State, district, or local party committee through a joint fundraising activity, that committee must allocate its direct fundraising costs using the funds received method and according to the following procedures:

(i) The committee must allocate its fundraising costs based on the ratio of funds received into its Federal account to its total receipts from each fundraising program or event. This ratio shall be estimated prior to each such program or event based upon the committee's reasonable prediction of its Federal and non-Federal revenue from that program or event, and must be noted in the committee's report for the period in which the first disbursement for such program or event occurred, submitted pursuant to 11 CFR 104.5. Any disbursements for fundraising costs made prior to the actual program or event must be allocated according to this estimated ratio.

(ii) No later than the date 60 days after each fundraising program or event from which both Federal and non-Federal funds are collected, the committee shall adjust the allocation ratio for that program or event to reflect the actual ratio of funds received. If the non-Federal account has paid more than its allocable share, the committee shall transfer funds from its Federal to its non-Federal account, as necessary, to reflect the adjusted allocation ratio. If the Federal account has paid more than its allocable share, the committee shall make any transfers of funds from its non-Federal to its Federal account to reflect the adjusted allocation ratio within the 60-day time period established by this paragraph. The committee shall make note of any such adjustments and transfers in its report for any period in which a transfer was made, and shall also report the date of the fundraising program or event that serves as the basis for the transfer. In the case of a telemarketing or direct mail campaign, the date for purposes of this paragraph is the last day of the telemarketing campaign, or the day on which the final direct mail solicitations are mailed.

(e) *Costs not allocable by State, district, and local party committees between Federal and non-Federal accounts.* The following costs incurred by State, district, and local party committees shall be paid only with Federal funds:

(1) Disbursements for State, district, and local party committees for activities that refer only to one or more candidates for Federal office must not be allocated. All such disbursements must be made from a Federal account.

(2) *Salaries and wages.* Salaries and wages for employees who spend more than 25% of their compensated time in a given month on activities in connection with a Federal election must not be allocated. All such disbursements must be made from a Federal account. *See* 11 CFR 300.33(c)(2).

(3) *Federal election activities.* Activities that are Federal election activities pursuant to 11 CFR 100.24 must not be allocated between Federal and non-Federal accounts. Only Federal funds, or a mixture of Federal funds and Levin funds, as provided in 11 CFR 300.33, may be used.

(4) *Fundraising Costs.* Expenses incurred by State, district, and local party committees directly related to programs or events undertaken to raise funds to be used, in whole or in part, for activities in connection with Federal and non-Federal elections that are Federal election activities pursuant to 11 CFR 100.24 must not be allocated between Federal and non-Federal accounts. Except as provided in 11 CFR 300.32(a)(4), all such disbursements must be made from a Federal account.

(f) *Transfers between accounts to cover allocable expenses.* State, district, and local party committees may transfer funds from their non-Federal to their Federal accounts or to an allocation account solely to meet allocable expenses under this section and only pursuant to the following requirements:

(1) *Payments from Federal accounts or from allocation accounts.*

(i) State, district, and local party committees must pay the entire amount of an allocable expense from their Federal accounts and transfer funds from their non-Federal account to the Federal account solely to cover the non-Federal share of that allocable expense; or

(ii) State, district, or local party committees may establish a separate allocation account into which funds from its Federal and non-Federal accounts may be deposited solely for the purpose of paying the allocable expenses of joint Federal and non-Federal activities.

(2) *Timing.*

(i) If a Federal or allocation account is used to make allocable expenditures and disbursements, State, district, and local party committees must transfer funds from their non-Federal to their Federal or allocation account to meet allocable expenses no more than 10 days before and no more than 60 days after the payments for which they are designated are made from a Federal or allocation account, except that transfers may be made more than 10 days before a payment is made from the Federal or allocation account if advance payment is required by the vendor(s) and if such payment is based on a reasonable estimate of the activity's final costs as determined by the committee and the vendor(s) involved.

(ii) Any portion of a transfer from a committee's non-Federal account to its Federal or allocation account that does not meet the requirement of paragraph (f)(2)(i) of this section shall be presumed to be a loan or contribution from the non-Federal account to the Federal or allocation account, in violation of the Act.

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (2 U.S.C. 439)

18. The authority citation for part 108 continues to read as follows:

Authority: 2 U.S.C. 434(a)(2), 438(a)(8), 439, 453.

19. Section 108.7 is amended by revising paragraphs (c)(4) and (c)(5) and adding paragraph (c)(6) to read as follows:

§ 108.7 Effect on State law (2 U.S.C. 453).

* * * * *

(c) * * *

(4) Prohibition of false registration, voting fraud, theft of ballots, and similar offenses;

(5) Candidate's personal financial disclosure; or

(6) Application of State law to the funds used for the purchase or construction of a State or local party office building to the extent described in 11 CFR 300.35.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

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

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h.

21. Section 110.1 is amended by adding new paragraph (c)(5) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees

(2 U.S.C. 441a(a)(1)).

* * * * *

(c) * * *

(5) On or after January 1, 2003, no person shall make contributions to a political committee established and maintained by a State committee of a political party in any calendar year that, in the aggregate, exceed $10,000.

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PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

22. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434(a)(11), 437d(a)(8), 438(a)(8), 441b.

23. Section 114.1 is amended by revising paragraph (a)(2)(ix) to read as follows:

§ 114.1 Definitions.

(a) * * *

(2) * * *

(ix) Donations to a State or local party committee used for the purchase or construction of its office building are subject to 11 CFR 300.35. No exception applies to contributions or donations to a national party committee that are made or used for the purchase or construction of any office building or facility; or

* * * * *

24. Subchapter C consisting of part 300 is added to Chapter I to read as follows:

SUBCHAPTER C—BIPARTISAN CAMPAIGN REFORM ACT OF 2002—(BCRA) REGULATIONS

PART 300—NON-FEDERAL FUNDS

Sec.

300.1 Scope, effective date, and organization.
300.2 Definitions.

Subpart A—National Party Committees

300.10 General prohibitions on raising and spending non-Federal funds (2 U.S.C. 441; (a) and (c)).
300.11 Prohibition on fundraising for and donating to certain tax-exempt organizations (2 U.S.C. 441; (d)).
300.12 Transition rules.
300.13 Reporting (2 U.S.C. 431 note and 434 (e)).

Subpart B—State, District, and Local Party Committees and Organizations

300.30 Accounts.
300.31 Receipt of Levin funds.
300.32 Expenditures and disbursements.
300.33 Allocation of costs of Federal election activity.
300.34 Transfers.
300.35 Office buildings.
300.36 Reporting Federal election activity; recordkeeping.
300.37 Prohibitions on fundraising for and donating to certain tax-exempt organizations (2 U.S.C. 441i (d)).

Subpart C—Tax-Exempt Organizations

300.50 Prohibited fundraising by national party committees (2 U.S.C. 441i(d)).
300.51 Prohibited fundraising by State, district, and local party committees (2 U.S.C. 441i(d)).
300.52 Fundraising by Federal candidates and Federal officeholders (2 U.S.C. 441i(e)(4)).

Subpart D—Federal Candidates and Officeholders

300.60 Scope (2 U.S.C. 441i (e)(1)).
300.61 Federal elections (2 U.S.C. 441i (e)(1)(A)).
300.62 Non-Federal elections (2 U.S.C. 441i (e)(1)(B)).
300.63 Exception for State party candidates (2 U.S.C. 441i (e)(2))
300.64 Exemption for attending, speaking, or appearing as a featured guest at fundraising events (2 U.S.C. 441i (e)(3)).
300.65 Exceptions for certain tax-exempt organizations (2 U.S.C. 441i (e)(1) and (4)).

Subpart E—State and Local Candidates

300.70 Scope (2 U.S.C. 441i (f)(1)).
300.71 Federal funds required for certain public communications (2 U.S.C. 441i(f)(1)).
300.72 Federal funds not required for certain communications (2 U.S.C. 441i(f)(2)).

Authority: 2 U.S.C. 434(e), 438(a)(8), 441a(a)(i), 441i, 453.

§ 300.1 Scope and effective date, and organization.

(a) *Introduction.* This part implements changes to the Federal Election Campaign Act of 1971, as amended (''FECA'' or the ''Act''), enacted by Title I of the Bipartisan Campaign Finance Reform Act of 2002 (''BCRA''). Public Law 107–155. Unless expressly stated to the contrary, nothing in this part alters the definitions, restrictions, liabilities, and obligations imposed by sections 431 to 455 of Title 2, United States Code, or regulations prescribed thereunder (11 CFR parts 100 to 116).

(b) *Effective dates.*

(1) Except as otherwise specifically provided in this part, this part shall take effect on November 6, 2002. However, subpart B of this part shall not apply with respect to runoff elections, recounts, or election contests resulting from elections held prior to such date. *See* 11 CFR 300.12 for transition rules applicable to subpart A of this part.

(2) The increase in individual contribution limits to State committees of political parties, as described in 11 CFR 110.1(c)(5), shall apply to contributions made on or after January 1, 2003.

(c) *Organization of part.* Part 300, which generally addresses non-Federal funds and closely related topics, is organized into five subparts. Each subpart is oriented to the perspective of a category of persons facing issues related to non-Federal funds.

(1) Subpart A of this part prescribes rules pertaining to national party committees, including general non-Federal funds prohibitions, fundraising, and donation prohibitions with regard to certain tax-exempt organizations, transition rules as BCRA takes effect, and reporting.

(2) Subpart B of this part pertains to State, district, and local political party committees and organizations. Subpart B of this part focuses on ''Levin Amendment'' to BCRA; office buildings; and fundraising and donation prohibitions with regard to certain tax-exempt organizations.

(3) Subpart C of this part addresses non-Federal funds from the perspective of tax-exempt organizations, setting out rules about prohibited fundraising for certain tax-exempt organizations by national party committees, State, district, and local party committees, and Federal candidates and officeholders.

(4) Subpart D of this part includes regulations pertaining to soliciting non-Federal funds from the perspective of Federal candidates and officeholders in Federal and non-Federal elections; including exceptions for those who are also State candidates and exemptions for those attending, speaking, and appearing as featured guests at fundraising events, or who solicit for certain tax-exempt organizations.

(5) Subpart E of this part focuses on State and local candidates, including regulations about using Federal funds for certain public communications, and

exceptions for entirely non-Federal communications.

(6) For rules pertaining to convention and host committees, see 11 CFR part 9008.

§ 300.2 Definitions.

(a) *501(c) organization that makes expenditures or disbursements in connection with a Federal election.* A 501(c) organization *that makes expenditures or disbursements in connection with a Federal election* as that term is used in 11 CFR 300.11, 300.37, 300.50, and 300.51 includes an organization that, within the current election cycle, plans to:

(1) Make expenditures or disbursements in connection with an election for Federal office including for Federal election activity; or

(2) Pay a debt incurred from the making of expenditures or disbursements in connection with an election for Federal office (including for Federal election activity) in a prior election cycle.

(b) *Agent.* For the purposes of part 300 of chapter I, agent means any person who has actual authority, either express or implied, to engage in any of the following activities on behalf of the specified persons:

(1) In the case of a national committee of a political party:

(i) To solicit, direct, or receive any contribution, donation, or transfer of funds; or,

(ii) To solicit any funds for, or make or direct any donations to, an organization that is described in 26 U.S.C 501(c) and exempt from taxation under 26 U.S.C. 501(a) (or has submitted an application for determination of tax exempt status under 26 U.S.C. 501(a)), or an organization described in 26 U.S.C. 527 (other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office).

(2) In the case of a State, district, or local committee of a political party:

(i) To expend or disburse any funds for Federal election activity; or

(ii) To transfer, or accept a transfer of, funds to make expenditures or disbursements for Federal election activity; or

(iii) To engage in joint fundraising activities with any person if any part of the funds raised are used, in whole or in part, to pay for Federal election activity; or

(iv) To solicit any funds for, or make or direct any donations to, an organization that is described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a) (or has submitted an application for determination of tax exempt status under 26 U.S.C. 501(a)), or an organization described in 26 U.S.C. 527 (other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office).

(3) In the case of an individual who is a Federal candidate or an individual holding Federal office, to solicit, receive, direct, transfer, or spend funds in connection with any election.

(4) In the case of an individual who is a candidate for State or local office, to spend funds for a public communication (*see* 11 CFR 100.26).

(c) *Directly or indirectly establish, maintain, finance, or control.*

(1) This paragraph (c) applies to national, State, district, and local committees of a political party, candidates, and holders of Federal office, including an officer, employee, or agent of any of the foregoing persons, which shall be referred to as ''sponsors'' in this section.

(2) To determine whether a sponsor directly or indirectly established, finances, maintains, or controls an entity, the factors described in paragraphs (c)(2)(i) through (x) of this section must be examined in the context of the overall relationship between sponsor and the entity to determine whether the presence of any factor or factors is evidence that the sponsor directly or indirectly established, finances, maintains, or controls the entity. Such factors include, but are not limited to:

(i) Whether a sponsor, directly or through its agent, owns controlling interest in the voting stock or securities of the entity;

(ii) Whether a sponsor, directly or through its agent, has the authority or ability to direct or participate in the governance of the entity through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;

(iii) Whether a sponsor, directly or through its agent, has the authority or ability to hire, appoint, demote, or otherwise control the officers, or other decision-making employees or members of the entity;

(iv) Whether a sponsor has a common or overlapping membership with the entity that indicates a formal or ongoing relationship between the sponsor and the entity;

(v) Whether a sponsor has common or overlapping officers or employees with the entity that indicates a formal or ongoing relationship between the sponsor and the entity;

(vi) Whether a sponsor has any members, officers, or employees who were members, officers or employees of the entity that indicates a formal or ongoing relationship between the sponsor and the entity, or that indicates the creation of a successor entity;

(vii) Whether a sponsor, directly or through its agent, provides funds or goods in a significant amount or on an ongoing basis to the entity, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17, and otherwise lawfully;

(viii) Whether a sponsor, directly or through its agent, causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17, and otherwise lawfully;

(ix) Whether a sponsor, directly or through its agent, had an active or significant role in the formation of the entity; and

(x) Whether the sponsor and the entity have similar patterns of receipts or disbursements that indicate a formal or ongoing relationship between the sponsor and the entity.

(3) *Safe harbor.* On or after November 6, 2002, an entity shall not be deemed to be directly or indirectly established, maintained, or controlled by another entity unless, based on the entities' actions and activities solely after November 6, 2002, they satisfy the requirements of this section. If an entity receives funds from another entity prior to November 6, 2002, and the recipient entity disposes of the funds prior to November 6, 2002, the receipt of such funds prior to November 6, 2002 shall have no bearing on determining whether the recipient entity is financed by the sponsoring entity within the meaning of this section.

(4) *Determinations by the Commission.*

(i) A sponsor or entity may request an advisory opinion of the Commission to determine whether the sponsor is no longer directly or indirectly financing, maintaining, or controlling the entity for purposes of this part. The request for such an advisory opinion must meet the requirements of 11 CFR part 112 and must demonstrate that the entity is not directly or indirectly financed, maintained, or controlled by the sponsor.

(ii) Notwithstanding the fact that a sponsor may have established an entity within the meaning of paragraph (c)(2) of this section, the sponsor or the entity

may request an advisory opinion of the Commission determining that the relationship between the sponsor and the entity has been severed. The request for such an advisory opinion must meet the requirements of 11 CFR part 112, and must demonstrate that all material connections between the sponsor and the entity have been severed for two years.

(iii) Nothing in this section shall require entities that are separate organizations on November 6, 2002 to obtain an advisory opinion to operate separately from each other.

(d) *Disbursement. Disbursement* means any purchase or payment made by:

(1) A political committee; or

(2) Any other person, including an organization that is not a political committee, that is subject to the Act.

(e) *Donation.* For purposes of part 300, *donation* means a payment, gift, subscription, loan, advance, deposit, or anything of value given to a person, but does not include contributions.

(f) *Federal account. Federal account* means an account at a campaign depository that contains funds to be used in connection with a Federal election.

(g) *Federal Funds. Federal funds* mean funds that comply with the limitations, prohibitions, and reporting requirements of the Act.

(h) *Levin account. Levin account* means an account at a campaign depository established by a State, district, or local committee of a political party pursuant to 11 CFR 300.30, for purposes of making expenditures or disbursements for Federal election activity or non-Federal activity (subject to State law) under 11 CFR 300.32.

(i) *Levin funds* mean funds that are raised pursuant to 11 CFR 300.31 and are or will be disbursed pursuant to 11 CFR 300.32.

(j) *Non-Federal account* means an account that contains funds to be used in connection with a State or local election or allocable expenses under 11 CFR 106.7, 300.30, or 300.33.

(k) *Non-Federal funds* mean funds that are not subject to the limitations and prohibitions of the Act.

(l) [Reserved].

(m) *To solicit.* For the purposes of part 300, to *solicit* means to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether the contribution, donation, transfer of funds, or thing of value, is to be made or provided directly, or through a conduit or intermediary. A solicitation does not include merely providing information or guidance as to the requirement of particular law.

(n) *To direct.* For the purposes of part 300, *to direct* means to ask a person who has expressed an intent to make a contribution, donation, or transfer of funds, or to provide anything of value, to make that contribution, donation, or transfer of funds, or to provide that thing of value, including through a conduit or intermediary. Direction does not include merely providing information or guidance as to the requirement of particular law.

(o) *Individual holding Federal office. Individual holding Federal office* means an individual elected to or serving in the office of President or Vice President of the United States; or a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

Subpart A—National Party Committees

§ 300.10 General prohibitions on raising and spending non-Federal funds (2 U.S.C. 441i(a) and (c)).

(a) *Prohibitions.* A national committee of a political party, including a national congressional campaign committee, must not:

(1) Solicit, receive, or direct to another person a contribution, donation, or transfer of funds, or any other thing of value that is not subject to the prohibitions, limitations and reporting requirements of the Act;

(2) Spend any funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act; or

(3) Solicit, receive, direct, or transfer to another person, or spend, Levin funds.

(b) *Fundraising costs.* A national committee of a political party, including a national congressional campaign committee, must use only Federal funds to raise funds that are used, in whole or in part, for expenditures and disbursements for Federal election activity.

(c) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a national party committee or a national congressional campaign committee; and

(2) An entity that is directly or indirectly established, financed, maintained, or controlled by a national party committee or a national congressional campaign committee.

§ 300.11 Prohibitions on fundraising for and donating to certain tax-exempt organizations (2 U.S.C 441i(d)).

(a) *Prohibitions.* A national committee of a political party, including a national congressional campaign committee, must not solicit any funds for, or make or direct any donations to the following organizations:

(1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity;

(2) An organization that has submitted an application for tax-exempt status under 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity; or

(3) An organization described in 26 U.S.C. 527, unless the organization is:

(i) A political committee under 11 CFR 100.5;

(ii) A State, district, or local committee of a political party; or

(iii) The authorized campaign committee of a State or local candidate;

(b) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a national party committee, including a national congressional campaign committee;

(2) An entity that is directly or indirectly established, financed, maintained, or controlled by a national party committee, including a national congressional campaign committee, or an officer or agent acting on behalf of such an entity; or

(3) An entity that is directly or indirectly established, financed, maintained, or controlled by an agent of a national, State, district, or local committee of a political party, including a national congressional campaign committee.

(c) *Determining whether a section 501(c) organization makes expenditures or disbursements in connection with Federal elections.* In determining whether a section 501(c) organization is one that makes expenditures or disbursements in connection with a Federal election, including expenditures or disbursements for Federal election activity, pursuant to paragraphs (a)(1) and (2) of this section, a national committee of a political party, including a national congressional campaign committee, or any other person described in paragraph (b) of this section, may obtain and rely upon a certification from the organization that satisfies the criteria described in paragraph (d) of this section.

(d) *Certification.* A national committee of a political party, including

a national congressional campaign committee, or any person described in paragraph (b) of this section, may rely upon a certification that meets all of the following criteria:

(1) The certification is a signed written statement by an officer or other authorized representative of the organization with knowledge of the organization's activities;

(2) The certification states that within the current election cycle, the organization has not made, and does not intend to make, expenditures or disbursements in connection with an election for Federal office (including for Federal election activity); and

(3) The certification states that the organization does not intend to pay debts incurred from the making of expenditures or disbursements in connection with an election for Federal office (including for Federal election activity) in a prior election cycle.

(e) If a national committee of a political party or any person described in paragraph (b) of this section has actual knowledge that the certification is false, the certification may not be relied upon.

(f) It is not prohibited for a national party or its agent to respond to a request for information about a tax-exempt group that shares the party's political or philosophical goals.

§ 300.12 Transition rules.

(a) *Permissible uses of excess non-Federal funds.* Non-Federal funds received before November 6, 2002, by a national committee of a political party, including a national congressional campaign committee, and in its possession on that date, must be used before January 1, 2003. Subject to the restrictions in paragraph (b) of this section, such funds may be used solely as follows:

(1) To retire outstanding debts or obligations that were incurred solely in connection with an election held prior to November 6, 2002; or

(2) To pay expenses, retire outstanding debts, or pay for obligations incurred solely in connection with any run-off election, recount, or election contest resulting from an election held prior to November 6, 2002.

(b) *Prohibited uses of non-Federal funds.* Non-Federal funds received by a national committee of a political party, including a national congressional campaign committee, before November 6, 2002, and in its possession on that date, may not be used for the following purposes:

(1) To pay any expenditure as defined in 2 U.S.C. 431(9);

(2) To retire outstanding debts or obligations that were incurred for any expenditure; or

(3) To defray the costs of the construction or purchase of any office building or facility.

(c) Any non-Federal funds remaining after payment of debts and obligations permitted in paragraph (a) of this section must be either disgorged to the United States Treasury, or returned by check to the donors, no later than December 31, 2002. Any refund checks not cashed by February 28, 2003 must be disgorged to the United States Treasury by March 31, 2003.

(d) *National party committee office building or facility accounts.* Before November 6, 2002, a national committee of a political party, including a national congressional campaign committee, may accept funds into its party office building or facility account, established pursuant to repealed 2 U.S.C. 431(8)(B)(viii), and may use the funds in the account only for the construction or purchase of an office building or facility. After November 5, 2002, the national party committees may no longer accept funds into such an account and must not use such funds for the purchase or construction of any office building or facility. Funds on deposit in any party office building or facility account on November 6, 2002, must be either disgorged to the United States Treasury or returned by check to the donors no later than December 31, 2002. Any refund checks not cashed by February 28, 2003 must be disgorged to the United States Treasury by March 31, 2003.

(e) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a national party committee or a national congressional campaign committee; and

(2) An entity that is directly or indirectly established, financed, maintained, or controlled by a national party committee or a national congressional campaign committee.

(f) *Treatment of Federal and non-Federal accounts during transition period.* The following provisions applicable to the allocation of, and payment for, expenses between Federal and non-Federal accounts of national party committees shall remain in effect between November 6 and December 31, 2002: 11 CFR 106.5(a),(b), (c), (f) and (g).

§ 300.13 Reporting (2 U.S.C. 431 note and 434(e)).

(a) *In general.* The national committee of a political party, any national congressional campaign committee of a political party, and any subordinate committee of either, shall report all receipts and disbursements during the reporting period.

(b) *Termination report for non-Federal accounts.* Unless a committee described in paragraph (a) of this section issues refund checks to donors as permitted by 11 CFR 300.12(c), each committee described in paragraph (a) of this section must file a termination report disclosing the disposition of funds in all non-Federal accounts and building fund accounts by January 31, 2003. Each committee that issues refund checks to donors must file a termination report covering the period ending March 31, 2003 disclosing the disposition of any refund checks not cashed by February 28, 2003, as required by 11 CFR 300.12(c) and (d).

(c) *Transitional reporting rules.*

(1) The reporting requirements covering receipts in 11 CFR 104.8(e) and (f) and disbursements in 11 CFR 104.9(e) for national party committee non-Federal accounts and building fund accounts shall remain in effect for the reports covering activity between November 6 and December 31, 2002.

(2) The reporting requirements covering disbursements in 11 CFR 104.9 (c) and (d) for national party committee non-Federal accounts and building fund accounts shall remain in effect for the reports covering activity between November 6, 2002 and March 31, 2003.

Subpart B—State, District, and Local Party Committees and Organizations

§ 300.30 Accounts

(a) *Scope and introduction.* This section applies to State, district, or local committees or organizations of a political party, whether or not the committee is a political committee under 11 CFR 100.5, that have receipts or make disbursements for Federal election activity. Paragraph (b) of this section describes and explains the types of accounts available to a political party committee or organization covered by this section. Paragraph (c) of this section sets out the account structure that must be maintained by a political party committee or organization covered by this section.

(b) *Types of accounts.* Each State, district, and local party organization or committee that has receipts or makes disbursements for Federal election activity must establish one or more of the following types of accounts, pursuant to paragraph (c) of this section.

(1) *Non-Federal accounts.* The funds deposited into this account are governed by State law. Disbursements, contributions, and expenditures made wholly or in part in connection with

Federal elections must not be made from any non-Federal account, except as permitted by paragraph (c)(3)(ii) of this section, 11 CFR 102.5(a)(4), 11 CFR 106.7(d)(1)(i), 11 CFR 300.33 and 11 CFR 300.34.

(2) *Levin account.* The funds deposited into this account must comply with 11 CFR 300.31. Such funds may be used for the categories of activities described at 11 CFR 300.32(b).

(3) *Federal account.* Federal accounts may be used for the deposit of contributions and the making of expenditures pursuant to the following conditions:

(i) Only contributions that are permissible pursuant to the limitations and prohibitions of the Act may be deposited into any Federal account, regardless of whether such contributions are for use in connection with Federal or non-Federal elections. *See* 11 CFR 103.3 regarding impermissible funds.

(ii) Only contributions solicited and received pursuant to the following conditions may be deposited in a Federal account:

(A) Contributions must be designated by the contributors for the Federal account;

(B) The solicitation must expressly state that contributions may be used wholly or in part in connection with a Federal election; or

(C) The contributor must be informed that all contributions are subject to the limitations and prohibitions of the Act.

(iii) All disbursements, contributions, and expenditures made wholly or in part by any State, district, or local party organization or committee in connection with a Federal election must be made from either:

(A) A Federal account, except as permitted by 11 CFR 300.32; or

(B) A separate allocation account (*see* paragraph (b)(4) of this section).

(iv) If all payments in connection with a Federal election, including payments for Federal election activities, are to be made from a Federal account, expenditures and disbursements for costs that are allocable pursuant to 11 CFR 106.7 or 11 CFR 300.33 must be made from the Federal account in their entirety, with the shares of a non-Federal account or of a Levin account being transferred to the Federal account pursuant to 11 CFR 106.7 and 11 CFR 300.33.

(v) No transfers may be made to a Federal account from any other account(s) maintained by a State, district, or local party committee or organization from any other party organization or committee at any level for the purpose of financing activity in connection with Federal elections, except as provided by paragraph (b)(3)(iv) of this section or 11 CFR 300.33 and 300.34.

(4) *Allocation accounts.* At the discretion of the party committee or organization, separate allocation accounts may be established for purposes of making allocable expenditures and disbursements.

(i) Only funds from the party organization's or committee's Federal and non-Federal accounts may be deposited into an allocation account used to make allocable expenditures and disbursements for activities in connection with Federal and non-Federal elections.

(ii) Only funds from the party organization's or committee's Federal account and Levin funds from its non-Federal or Levin account(s) may be deposited into an allocation account used to make allocable expenditures and disbursements for activities undertaken pursuant to 11 CFR 300.32(b).

(iii) Once a party organization or committee has established a separate allocation account for activities in connection with Federal and non-Federal elections and a separate account for activities undertaken pursuant to 11 CFR 300.32(b), all allocable expenses must be paid from the appropriate allocation account for as long as that account is maintained.

(iv) The party organization or committee must transfer to the appropriate allocation account funds from its Federal and non-Federal or Levin accounts in amounts proportionate to the Federal, non-Federal and Levin shares of each allocable expense pursuant to 11 CFR 106.7 and 11 CFR 300.33. The transfers must be made pursuant to 11 CFR 300.33 and 300.34.

(v) No funds contained in an allocation account may be transferred to any other account maintained by the party committee or organization.

(vi) For reporting purposes, all allocation accounts must be treated as Federal accounts.

(c) *Required account or accounts.* Each State, district, and local party organization or committee that has receipts or makes disbursements for Federal election activity must establish its accounts in accordance with paragraphs (c)(1), or (c)(2), or (c)(3) of this section.

(1) One or more Federal accounts in a campaign depository, in accordance with 11 CFR part 103, which must be treated as a separate political committee and be required to comply with the requirements of the Act including the registration and reporting requirements of 11 CFR part 102 and part 104. State, district, and local party organizations or committees may choose to make non-Federal disbursements, subject to State law, and disbursements for Federal election activity from a Federal account provided that such disbursements are reported pursuant to 11 CFR 104.17 and 11 CFR 300.36, and provided that contributors of the Federal funds so used were notified that their contributions were subject to the limitations and prohibitions of the Act.

(2) Establish at least three separate accounts in depositories as follows—

(i) One or more Federal accounts;

(ii) One or more Levin accounts; and

(iii) One or more Non-Federal accounts.

(3) Establish two separate accounts in depositories as follows:

(i) One or more Federal accounts, and;

(ii) An account that must function as both a Non-Federal account and a Levin account. If such an account is used, the State, district, and local party must demonstrate through a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) that whenever such organization makes a disbursement for activities undertaken pursuant to 11 CFR 300.32(b), that organization had received sufficient contributions or Levin funds to make such disbursement.

(d) *Recordkeeping.* All party organizations or committees must keep records of deposits into and disbursements from such accounts, and, upon request, must make such records available for examination by the Commission.

§ 300.31 Receipt of Levin funds.

(a) *General rule.* Levin funds expended or disbursed by any State, district, or local committee must be raised solely by the committee that expends or disburses them.

(b) *Compliance with State law.* Each donation of Levin funds solicited or accepted by a State, district, or local committee of a political party must be lawful under the laws of the State in which the committee is organized.

(c) *Donations from sources permitted by State law but prohibited by the Act.* If the laws of the State in which a State, district, or local committee of a political party is organized permit donations to the committee from a source prohibited by the Act and this chapter, other than 2 U.S.C. 441e, the committee may solicit and accept donations of Levin funds from that source, subject to paragraph (d) of this section.

(d) *Donation amount limitation.*

(1) *General rule.* A State, district, or local committee of a political party must not solicit or accept from any person (including any entity established, financed, maintained, or controlled by such person) one or more donations of Levin funds aggregating more than $10,000 in a calendar year.

(2) *Effect of different State limitations.* If the laws of the State in which a State, district, or local committee of a political party is organized limit donations to that committee to less than the amount specified in paragraph (d)(1) of this section, then the State law amount limitations shall control. If the laws of the State in which a State, district, or local committee of a political party is organized permit donations to that committee in amounts greater than the amount specified in paragraph (d)(1) of this section, then the amount limitations in paragraph (d)(1) of this section shall control.

(3) *No affiliation of committees for purposes of this paragraph.* For purposes of determining compliance with paragraph (d) of this section only, State, district, and local committees of the same political party shall not be considered affiliated. Subject to the amount limitations specified in paragraphs (d)(1) and (d)(2) of this section, a person (including any entity directly or indirectly established, financed, maintained, or controlled by such person) may donate without additional limitation to each and every State, district, and local committee of a political party.

(e) *No Levin funds from a national party committee or a Federal candidate or officeholder.* A State, district, or local committee of a political party disbursing Levin funds pursuant to 11 CFR 300.32 must not accept or use for such purposes any donations or other funds that are solicited, received, directed, transferred, or spent by or in the name of any of the following persons:

(1) A national committee of a political party (including a national congressional campaign committee of a political party), any officer or agent acting on behalf of such a national party committee, or any entity that is directly or indirectly established, financed, maintained, or controlled by such a national party committee. Notwithstanding 11 CFR 102.17, a State, district, or local committee of a political party must not raise Levin funds by means of joint fundraising with a national committee of a political party, any officer or agent acting on behalf of such a national party committee, or any entity that is directly or indirectly established, financed, maintained, or controlled by such a national party committee. Nothing in this section shall be construed to prohibit a State, district, or local committee of a political party from jointly raising, under 11 CFR 102.17, Federal funds not to be used for Federal election activity with a national committee of a political party, or its agent, or any entity directly or indirectly established, financed, maintained, or controlled by such a national party committee.

(2) A Federal candidate, or an individual holding Federal office, or an agent of a Federal candidate or officeholder, or an entity directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, one or more Federal candidates or individuals holding Federal office. Notwithstanding 11 CFR 102.17, a State, district, or local committee of a political party must not raise Levin funds by means of joint fundraising with a Federal candidate, an individual holding Federal office, or an entity directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, one or more candidates or individuals holding Federal office. A Federal candidate or individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party at which Levin funds are raised. *See* 11 CFR 300.64.

(f) *Certain joint fundraising prohibited.* Notwithstanding 11 CFR 102.17, a State, district, or local committee of a political party must not raise Levin funds by means of any joint fundraising activity with any other State, district, or local committee of any political party, the agent of such a committee, or an entity directly or indirectly established, financed, maintained, or controlled by such a committee. This prohibition includes State, district, and local committees of a political party organized in another State. Nothing in this section shall be construed to prohibit two or more State, district, or local committees of a political party from jointly raising, under 11 CFR 102.17, Federal funds not to be used for Federal election activity.

(g) *Safe Harbor.* The use of a common vendor for fundraising by more than one State, district, or local committee or a political party, or the agent of such a committee does not constitute joint fundraising within the meaning of this section.

§ 300.32 Expenditures and disbursements.

(a) *Federal funds.*

(1) An association or similar group of candidates for State or local office, or an association or similar group of individuals holding State or local office, must make any expenditures or disbursements for Federal election activity solely with Federal funds.

(2) Except as provided in this part, a State, district, or local committee of a political party that makes expenditures or disbursements for Federal election activity must use Federal funds for that purposes, subject to the provisions of this chapter.

(3) State, district, and local party committees that raise Federal funds to be used, in whole or in part, for Federal election activities must pay the direct costs of such fundraising only with Federal funds. The direct costs of a fundraising program or event include expenses for the solicitation of funds and for the planning and administration of actual fundraising programs and events.

(4) State, district, and local party committees that raise Levin funds to be used, in whole or in part, for Federal election activity must pay the direct costs of such fundraising with either Federal or Levin funds. The direct costs of a fundraising program or event include expenses for the solicitation of funds and for the planning and administration of actual fundraising programs and events.

(b) *Levin funds.* A State, district, or local committee of a political party may spend Levin funds in accordance with this part on the following types of activity:

(1) Subject to the conditions set out in paragraph (c) of this section, only the following types of Federal election activity:

(i) Voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election; and

(ii) Voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot).

(2) Any use that is lawful under the laws of the State in which the committee is organized, other than the Federal election activities defined in 11 CFR 100.24(b)(3) and (4). A disbursement of Levin funds under this paragraph need not comply with paragraphs (c)(1) and (c)(2) of this section, except as required by State law.

(c) *Conditions and restrictions on spending Levin funds.*

(1) The Federal election activity for which the disbursement is made must

not refer to a clearly identified candidate for Federal office.

(2) The disbursement must not pay for any part of the costs of any broadcasting, cable, or satellite communication, other than a communication that refers solely to a clearly identified candidate for State or local office.

(3) The disbursement must be made from funds raised in accordance with 11 CFR 300.31.

(4) The disbursements for allocable Federal election activity that exceed in the aggregate $5,000 in a calendar year may be paid for entirely with Federal funds or may be allocated between Federal funds and Levin funds according to 11 CFR 300.33. Disbursements for Federal election activity that may be allocated and that aggregate $5,000 or less in a calendar year may be paid for entirely with Federal funds, entirely with Levin funds, or may be allocated between Federal funds and Levin funds according to 11 CFR 300.33.

(d) *Non-Federal activities.* A State, district, or local committee of a political party that makes disbursements for non-Federal activity may make those disbursements from its Federal, Levin, or non-Federal funds, subject to the laws of the State in which it is organized. A State, district, or local party committee that engages in fundraising for solely non-Federal funds may pay the costs related to such fundraising from any account, subject to State law, including a Federal account.

§ 300.33 Allocation of costs of Federal election activity.

(a) *Costs of Federal election activity allocable by State, district, and local party committees and organizations.*

(1) *Costs of voter registration.* Subject to the conditions of 11 CFR 300.32(c), State, district, and local party committees and organizations may allocate disbursements or expenditures, except salaries and wages for employees, between Federal funds and Levin funds for voter registration activity, as defined in 11 CFR 100.24(a)(2), that takes place during the period that begins on the date that is 120 days before the date of a regularly scheduled Federal election and that ends on the date of the election, provided that the activity does not refer to a clearly identified Federal candidate.

(2) *Costs of voter identification, get-out-the-vote activity, or generic campaign activities within certain time periods.* Subject to the conditions of 11 CFR 300.32(c), State, district, and local party committees and organizations may allocate disbursements or expenditures, except salaries and wages for employees, between Federal funds and Levin funds for voter identification, get-out-the-vote activity, or generic campaign activities, as defined in 11 CFR 100.24(a)(3) and (4) and 11 CFR 100.25, that are conducted in connection with an election in which a candidate for Federal office is on the ballot and within the time periods set forth in 11 CFR 100.24(a)(1), provided that the activity does not refer to a clearly identified Federal candidate.

(b) *Allocation percentages.* State, district, and local party committees and organizations that choose to allocate between Federal funds and Levin funds their expenditures and disbursements, except for salaries and wages, in connection with activities described in paragraph (a) of this section that take place within the time periods set forth in 11 CFR 100.24(a)(1) or paragraph (a) of this section must allocate the following minimum percentages to their Federal funds:

(1) *Presidential election years.* If a Presidential candidate, but no Senate candidate appears on the ballot, State, district, and local party committees and organizations must allocate at least 28% of expenses for activities described in paragraph (a) of this section to their Federal funds.

(2) *Presidential and Senate election year.* If a Presidential candidate and a Senate candidate appear on the ballot, State, district, and local party committees and organizations must allocate at least 36% of expenses for activities described in paragraph (a) of this section to their Federal funds.

(3) *Senate election year.* If a Senate candidate, but no Presidential candidate, appears on the ballot, State, district, and local party committees and organizations must allocate at least 21% of expenses for activities described in paragraph (a) of this section to their Federal funds.

(4) *Non-Presidential and non-Senate year.* If neither a Presidential nor a Senate candidate appears on the ballot, State, district, and local party committees and organizations must allocate at least 15% of expenses for activities described in paragraph (a) of this section to their Federal funds.

(c) *Costs of Federal election activity not allocable by State, district, and local party committees.* The following costs incurred by State, district, and local party committees and organizations must be paid only with Federal funds:

(1) *Public communications.* Expenditures for public communications as defined in 11 CFR 100.26 by State, district, and local party committees and organizations that refer to a clearly identified candidate for Federal office and that promote, support, attack, or oppose any such candidate for Federal office must not be allocated between or among Federal, non-Federal, and Levin accounts. Only Federal funds may be used.

(2) *Salaries and wages.* Salaries and wages for employees who spend more than 25% of their compensated time in a given month on Federal election activity or activities in connection with a Federal election must not be allocated between or among Federal, non-Federal, and Levin accounts. Only Federal funds may be used. Salaries and wages for employees who spend 25% or less of their compensated time in a given month on Federal election activity or activities in connection with a Federal election shall be paid from funds that comply with State law.

(3) *Fundraising costs.* Disbursements for direct fundraising costs incurred by State, district, and local party committees and organizations for funds to be used, in whole or in part, for Federal election activity, including the activities described in paragraph (a) of this section, must not be allocated between or among Federal, non-Federal and Levin funds. Only Federal or Levin funds may be used.

(d) *Transfers between accounts to cover allocable expenses.* State, district, and local party committees and organizations may transfer Levin funds from their Levin or non-Federal accounts to their Federal accounts or to allocation accounts solely to meet expenses allocable pursuant to paragraphs (a)(1) and (2) of this section and only pursuant to the following methods:

(1) *Payments from Federal accounts or from allocation accounts.*

(i) If Federal accounts are used to make payments for allocable activities, State, district, and local party committees and organizations must pay the entire amount of allocable expenses from their Federal accounts and transfer Levin funds from their Levin or non-Federal accounts to their Federal accounts solely to cover the portions of the expenses for which Levin funds may be used; or

(ii) State, district, and local party committees and organizations may establish separate allocation accounts into which Federal funds and Levin funds may be deposited solely for the purpose of paying allocable expenses.

(2) *Timing.*

(i) If Federal or allocation accounts are used to make allocable expenditures and disbursements, State, district, and local party committees and organizations must transfer Levin funds

to their Federal or allocation accounts to meet allocable expenses no more than 10 days before and no more than 60 days after the payments for which they are designated are made from a Federal or allocation account, except that transfers may be made more than 10 days before a payment is made from the Federal or allocation account if advance payment is required by the vendor(s) and if such payment is based on a reasonable estimate of the activity's final costs as determined by the committee and the vendor(s) involved.

(ii) Any portion of a transfer of Levin funds to a party committee or organization's Federal or allocation account that does not meet the requirement of paragraph (d)(2)(i) of this section shall be presumed to be a loan or contribution from the Levin or non-Federal account to the Federal or allocation account, in violation of the Act.

§ 300.34 Transfers.

(a) *Federal funds.*

(1) Notwithstanding 11 CFR 102.6(a)(1)(ii), a State, district, or local committee of a political party must not use any Federal funds transferred to it from, or otherwise accepted by it from, any of the persons enumerated in paragraphs (b)(1) and (b)(2) of this section as the Federal component of an expenditure or disbursement for Federal election activity under 11 CFR 300.32. A State, district, or local committee of a political party must itself raise the Federal component of an expenditure or disbursement allocated between Federal funds and Levin funds under 11 CFR 300.32 and 300.33.

(2) A State, district, or local committee of a political party that makes an expenditure or disbursement of Federal funds for Federal election activities must demonstrate through a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) that the Federal funds used to make the expenditure or disbursement do not include Federal funds transferred to the committee in violation of this section. Alternatively, a State, district, or local committee of a political party may establish a separate Federal account into which the committee deposits only Federal funds raised by the committee itself, and from which all expenditures or disbursement of Federal funds for Federal election activities are made.

(b) *Levin funds.* Levin funds must be raised solely by the State, district, or local committee of a political party that expends or disburses the funds. A State, district, or local committee of a political party must not use as Levin funds any funds transferred or otherwise provided to the committee by:

(1) Any other State, district, or local committee of any political party, any officer or agent acting on behalf of such a committee, or any entity directly or indirectly established, financed, maintained or controlled by such a committee; or,

(2) The national committee of any political party (including a national congressional campaign committee of a political party), any officer or agent acting on behalf of such a committee, or any entity directly or indirectly established, financed, maintained, or controlled by such a committee.

(c) *Allocation transfers.* Transfers of Levin funds between the accounts of a State, district, or local committee of a political party for allocation purposes must comply with 11 CFR 300.30 and 11 CFR 300.33.

§ 300.35 Office buildings.

(a) *General provision.* For the purchase or construction of its office building, a State or local party committee may spend Federal funds or non-Federal funds that are not subject to the limitations, prohibitions, and disclosure provisions of the Act, so long as such funds are not contributed or donated by a foreign national. *See* 2 U.S.C. 441e. If non-Federal funds are used, they are subject to State law. An office building must not be purchased or constructed for the purpose of influencing the election of any candidate in any particular election for Federal office. For purposes of this section, the term *local party committee* shall include a *district party committee.*

(b) *Application of State law.* Non-Federal funds received by a State or local party committee that are spent for the purchase or construction of its office building are subject to State law as set forth in paragraphs (b)(1) and (2) of this section.

(1) *Non-Federal account.* If a State or local party committee uses non-Federal funds, Federal law does not preempt or supersede State law as to the source of funds used, the permissibility of the disbursements, or the reporting of the receipt and disbursement of such funds, except as provided in paragraph (a) of this section.

(2) *Levin funds.* Levin funds may be used for the purchase or construction of a State or local party committee office building, if permitted by State law.

(c) *Leasing a portion of the party office building.* A State or local party committee may lease a portion of its office building to others to generate income at the usual and normal charge. If the building is purchased or constructed in whole or in part with non-Federal funds, all rental income shall be deposited in the committee's non-Federal account and used only for non-Federal purposes. Such rental income and its use must also comply with State law. If the building is purchased or constructed solely with Federal funds, the rental income may be deposited in the Federal account. The receipt of such funds shall be reported in compliance with 11 CFR 104.3(a)(4)(vi).

(d) *Transitional Provisions for State Party Building or Facility Account.* Up to and including November 5, 2002, the State committee of a political party may accept funds into its party office building or facility account, established pursuant to repealed 2 U.S.C. 431(8)(B)(viii), designated for the purchase or construction of an office building. Starting on November 6, 2002, the funds in the account may not be used for Federal account or Levin account purposes, but may be used for any non-Federal purposes, as permitted under State law.

§ 300.36 Reporting Federal election activity; recordkeeping.

(a) *Requirements for a State, district, or local committee of a political party, or an association or similar group of candidates for State or local office or of individuals holding State or local office, that is not a political committee.*

(1) A State, district, or local committee of a political party, or an association or similar group of candidates for State or local office or of individuals holding State or local office, that is not a political committee (*see* 11 CFR 100.5) must demonstrate through a reasonable accounting method that whenever it makes a payment of Federal funds or Levin funds (if it is permitted to spend Levin funds) for Federal election activity (*see* 11 CFR 300.32 and 300.33) it has received sufficient funds subject to the limitations and prohibitions of the Act to make the payment. Such an organization must keep records of amounts received or expended under this paragraph and, upon request, shall make such records available for examination by the Commission.

(2) Notwithstanding the foregoing, a payment of Federal funds or Levin funds for Federal election activity shall not constitute an expenditure for purposes of determining whether a State, district, or local committee of a political party, or an association or similar group of candidates for State or local office or of individuals holding State or local office, qualifies as a

political committee under 11 CFR 100.5, unless the payment otherwise qualifies as an expenditure under 2 U.S.C. 431(9). A payment of Federal funds for Federal election activity that refers to a clearly identified Federal candidate and that meets the criteria of 11 CFR 100.8(b)(10), (16), or (18) *(exempt activities)* shall be treated as a payment for exempt activity in accordance with all applicable provisions of this chapter, including, but not limited to, 11 CFR 100.5(c).

(b) *Requirements for a State, district, or local committee of a political party, or an association or similar group of candidates for State or local office or of individuals holding State or local office, that is a political committee.*

(1) *Requirements for a State, district, or local committee of a political party that has less than $5,000 of aggregate receipts and disbursements for Federal election activity in a calendar year, and for an association or similar group of candidates for State or local office or of individuals holding State or local office at all times.* This paragraph applies to a State, district, or local committee of a political party that is a political committee, and that has less than $5,000 of aggregate receipts and disbursements for Federal election activity in a calendar year; and, at all times, to an association or similar group of candidates for State or local office or of individuals holding State or local office that is a political committee (*see* 11 CFR 100.5). Such a party committee or association of candidates or officeholders must report all receipts and disbursements of Federal funds for Federal election activity, including the Federally allocated portion of a payment for Federal election activity. A disbursement of Federal funds or Levin funds for Federal election activity (*see* 11 CFR 300.32 and 300.33) by either such a party committee or association of candidates or officeholders shall not be deemed an expenditure and reported as such pursuant to 11 CFR part 104, unless the disbursement otherwise qualifies as an expenditure under 2 U.S.C. 431(9).

(2) *Requirements for a State, district, or local committee of a political party that has $5,000 or more of aggregate receipts and disbursements for Federal election activity in a calendar year.* A State, district, or local committee of a political party that is a political committee (*see* 11 CFR 100.5) must report all receipts and disbursements made for Federal election activity if the aggregate amount of such receipts and disbursements is $5,000 or more during the calendar year. The disclosure required by this paragraph must include receipts and disbursements of Federal funds and of Levin funds used for Federal election activity.

(i) *Reporting of allocation of expenses between Federal funds and Levin funds.* A State, district, or local committee of a political party that makes a disbursement for Federal election activity that is allocated between Federal funds and Levin funds (*see* 11 CFR 300.33) must report for each such disbursement:

(A) In the first report of a calendar year disclosing an allocated disbursement for Federal election activity, the committee must state the allocation percentages to be applied for allocable Federal election activity pursuant to 11 CFR 300.33(b).

(B) In each subsequent report in the calendar year itemizing an allocated disbursement for Federal election activity, the committee must state the category of Federal election activity (*see* 11 CFR 100.24(b)) for which each allocated disbursement was made, and must disclose the total amounts disbursed from Federal funds and Levin funds for that year to date for each such category.

(ii) *Reporting of allocation transfers.* A committee that makes allocated disbursements for Federal election activities in accordance with 11 CFR 300.33(d) shall report each transfer of Levin funds from its Levin or non-Federal account, to its Federal account, and each transfer from its Federal account and its Levin or non-Federal account into an allocation account, for the purpose of making such disbursements. In the report covering the period in which each transfer occurred, the committee must explain in a memo entry the allocated disbursement to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one category of Federal election activity, the committee must itemize the transfer, showing the amounts designated for each category.

(iii) *Reporting of allocated disbursements.* For each disbursement allocated between Federal funds and Levin funds, the committee must report the full name and address of each person to whom the disbursement was made, the date of the disbursement, amount, and purpose of the disbursement. If the disbursement is for the allocable costs of more than one category of Federal election activity, the committee must itemize the disbursement, showing the amounts designated for each category. The committee must also disclose the total amount disbursed from Federal funds and Levin funds for Federal election activity that calendar year, to date, for each category of Federal election activity.

(iv) *Itemization.* The disclosure required by paragraph (b)(2) of this section must include, in addition to any other applicable reporting requirement of this chapter, the itemized disclosure of receipts and disbursements of $200 or more to or from any person for Federal election activities.

(3) *Reporting of disbursements allocated between Federal funds and non-Federal funds, other than Levin funds.* A State, district, or local committee of a political party that makes a disbursement for costs allocable between Federal and non-Federal funds, other than the costs of Federal election activity that is allocated between Federal funds and Levin funds under 11 CFR 300.33, must comply with 11 CFR 104.17.

(c) *Filing.*

(1) *Schedule.* A State, district, or local committee of a political party, or an association or similar group of candidates for State or local office or of individuals holding State or local office, that must file reports under paragraph (b) of this section must comply with the monthly filing schedule in 11 CFR 104.5(c)(3).

(2) *Electronic filing.* Receipts of Federal funds for Federal election activity that constitute contributions under 11 CFR 100.7, and disbursements of Federal funds for Federal election activity that constitute expenditures under 11 CFR 100.8, apply when determining whether a political committee must file reports in an electronic format under 11 CFR 104.18.

(d) *Recordkeeping.* A State, district, or local committee of a political party, or an association or similar group of candidates for State or local office or of individuals holding State or local office, that must file reports under paragraph (b) of this section must comply with the requirements of 11 CFR 104.14.

§ 300.37 Prohibitions on fundraising for and donating to certain tax-exempt organizations (2 U.S.C. 441i(d)).

(a) *Prohibitions.* A State, district, or local committee of a political party must not solicit any funds for, or make or direct any donations to:

(1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity;

(2) An organization that has submitted an application for tax-exempt status under 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity; or

(3) An organization described in 26 U.S.C. 527, unless the organization is:

(i) A political committee under 11 CFR 100.5;

(ii) A State, district, or local committee of a political party;

(iii) The authorized campaign committee of a State or local candidate; or

(iv) A political committee under State law, that supports only State or local candidates and that does not make expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity.

(b) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a State, district, or local committee of a political party;

(2) An entity that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee or a political party or an officer or agent acting on behalf of such an entity; or

(3) An entity that is directly or indirectly established, financed, maintained, or controlled by an agent of a State, district, or local committee of a political party.

(c) *Determining whether an organization makes expenditures or disbursements in connection with a Federal election.*

(1) In determining whether a section 501(c) organization is one that makes expenditures or disbursements in connection with a Federal election, including expenditures or disbursements for Federal election activity, pursuant to paragraphs (a)(1) and (2) of this section, a State, district, or local committee of a political party or any other person described in paragraph (b) of this section, may obtain and rely upon a certification from the organization that satisfies the criteria described in paragraph (d) of this section.

(2) In determining whether a section 527 organization is a State-registered political committee that supports only State or local candidates and does not make expenditures or disbursements in connection with an Federal election, including expenditures or disbursements for Federal election activity, pursuant to paragraph (a)(3)(iv) of this section, a State, district, or local committee of a political party or any other person described in paragraph (b) of this section, may obtain and rely upon a certification from the organization that satisfies the criteria described in paragraph (d) of this section.

(d) *Certification.* A State, district, or local committee of a political party or any person described in paragraph (b) of this section may rely upon a certification that meets all of the following criteria:

(1) The certification is a signed written statement by an officer or other authorized representative of the organization with knowledge of the organization's activities or by the treasurer of the State-registered political committee described in paragraph (a)(3)(iv) of this section;

(2) The certification states that within the current election cycle, the organization or political committee has not made, and does not intend to make, expenditures or disbursements in connection with an election for Federal office (including for Federal election activity); and

(3) The certification states that the organization or political committee does not intend to pay debts incurred from the making of expenditures or disbursements in connection with an election for Federal office (including for Federal election activity) in a prior election cycle.

(e) If a State, district, or local committee of a political party or any person described in paragraph (b) of this section has actual knowledge that the certification is false, the certification may not be relied upon.

(f) It is not prohibited for a State, district, or local committee of a political party or its agents to respond to a request for information about a tax-exempt group that shares the party's political or philosophical goals.

Subpart C—Tax-Exempt Organizations

§ 300.50 Prohibited fundraising by national party committees (2 U.S.C. 441i(d)).

(a) *Prohibitions on fundraising and donations.* A national committee of a political party, including a national congressional campaign committee, must not solicit any funds for, or make or direct any donations to the following organizations:

(1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity;

(2) An organization that has submitted an application for tax-exempt status under 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity; or

(3) An organization described in 26 U.S.C. 527, unless the organization is:

(i) A political committee under 11 CFR 100.5;

(ii) A State, district, or local committee of a political party; or

(iii) The authorized campaign committee of a State or local candidate;

(b) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a national party committee, including a national congressional campaign committee;

(2) An entity that is directly or indirectly established, financed, maintained, or controlled by a national party committee, including a national congressional campaign committee, or an officer or agent acting on behalf of such an entity; or

(3) An entity that is directly or indirectly established, financed, maintained, or controlled by an agent of a national, State, district, or local committee of a political party, including a national congressional campaign committee.

(c) *Determining whether a section 501(c) organization makes expenditures or disbursements in connection with Federal elections.* In determining whether a section 501(c) organization is one that makes expenditures or disbursements in connection with a Federal election, including expenditures or disbursements for Federal election activity, pursuant to paragraphs (a)(1) and (2) of this section, a national committee of a political party, including a national congressional campaign committee, or any other person described in paragraph (b) of this section, may obtain and rely upon a certification from the organization that satisfies the criteria described in paragraph (d) of this section.

(d) *Certification.* A national committee of a political party, including a national congressional campaign committee, or any person described in paragraph (b) of this section, may rely upon a certification that meets all of the following criteria:

(1) The certification is a signed written statement by an officer or other authorized representative of the organization with knowledge of the organization's activities;

(2) The certification states that within the current election cycle, the organization has not made, and does not intend to make, expenditures or disbursements in connection with an election for Federal office (including for Federal election activity); and

(3) The certification states that the organization or political committee does not intend to pay debts incurred from the making of expenditures or disbursements in connection with an election for Federal office (including for Federal election activity) in a prior election cycle.

(e) *Reliance on false certification.* If a national committee of a political party or any person described in paragraph (b) of this section has actual knowledge that the certification is false, the certification may not be relied upon.

(f) *Requests for information.* It is not prohibited for a national party or its agent to respond to a request for information about a tax-exempt group that shares the party's political or philosophical goals.

§ 300.51 Prohibited fundraising by State, district, or local party committees (2 U.S.C. 441i(d)).

(a) *Prohibitions.* A State, district, or local committee of a political party must not solicit any funds for, or make or direct any donations to:

(1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity;

(2) An organization that has submitted an application for tax-exempt status under 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity; or

(3) An organization described in 26 U.S.C. 527, unless the organization is:

(i) A political committee under 11 CFR 100.5;

(ii) A State, district, or local committee of a political party;

(iii) The authorized campaign committee of a State or local candidate; or

(iv) A political committee under State law, that supports only State or local candidates and that does not make expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity.

(b) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a State, district, or local committee of a political party;

(2) An entity that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee or a political party or an officer or agent acting on behalf of such an entity; or

(3) An entity that is directly or indirectly established, financed, maintained, or controlled by an agent of a State, district, or local committee of a political party.

(c) *Determining whether an organization makes expenditures or disbursements in connection with a Federal election.*

(1) In determining whether a section 501(c) organization is one that makes expenditures or disbursements in connection with a Federal election, including expenditures or disbursements for Federal election activity, pursuant to paragraphs (a)(1) and (2) of this section, a State, district, or local committee of a political party or any other person described in paragraph (b) of this section, may obtain and rely upon a certification from the organization that satisfies the criteria described in paragraph (d) of this section.

(2) In determining whether a section 527 organization is a State-registered political committee that supports only State or local candidates and does not make expenditures or disbursements in connection with a Federal election, including expenditures or disbursements for Federal election activity, pursuant to paragraph (a)(3)(iv) of this section, a State, district, or local committee of a political party or any other person described in paragraph (b) of this section, may obtain and rely upon a certification from the organization that satisfies the criteria described in paragraph (d) of this section.

(d) *Certification.* A State, district, or local committee of a political party or any person described in paragraph (b) of this section may rely upon a certification that meets all of the following criteria:

(1) The certification is a signed written statement by an officer or other authorized representative of the organization with knowledge of the organization's activities or by the treasurer of the State-registered political committee described in paragraph (a)(3)(iv) of this section;

(2) The certification states that within the current election cycle, the organization or political committee has not made, and does not intend to make, expenditures or disbursements in connection with an election for Federal office (including for Federal election activity); and

(3) The certification states that the organization does not intend to pay debts incurred from the making of expenditures or disbursements in connection with an election for Federal office (including for Federal election activity) in a prior election cycle.

(e) If a State, district, or local committee of a political party or any person described in paragraph (b) of this section has actual knowledge that the certification is false, the certification may not be relied upon.

(f) It is not prohibited for a State, district, or local committee of a political party or its agents to respond to a request for information about a tax-exempt group that shares the party's political or philosophical goals.

§ 300.52 Fundraising by Federal candidates and Federal officeholders (2 U.S.C. 441i(e)(1)&(4)).

A Federal candidate, an individual holding Federal office, and an individual agent acting on behalf of either may make the following solicitations of funds on behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a), or an organization that has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c):

(a) *General solicitations.* A Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either, may make a general solicitation of funds, without regard to source or amount limitation, if:

(1) The organization does not engage in activities in connection with an election, including any activity described in paragraph (c) of this section; or

(2)(i) The organization conducts activities in connection with an election, but the organization's principal purpose is not to conduct election activities or any activity described in paragraph (c) of this section; and

(ii) The solicitation is not to obtain funds for activities in connection with an election or any activity described in paragraph (c) of this section.

(b) *Specific solicitations.* A Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either, may make a solicitation explicitly to obtain funds for any activity described in paragraph (c) of this section or for an organization whose principal purpose is to conduct that activity, if:

(1) The solicitation is made only to individuals; and

(2) The amount solicited from any individual does not exceed $20,000 during any calendar year.

(c) *Voter registration, voter identification, get-out-the-vote activity and generic campaign activity.* This section applies to only the following types of Federal election activity:

(1) Voter registration activity, as described in 11 CFR 100.24(a)(2), during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election; or

(2) The following activities conducted in connection with an election in which one or more Federal candidates appear on the ballot (*see* 11 CFR 100.24(a)(1)), regardless of whether one or more State candidates also appears on the ballot:

(i) Voter identification as described in 11 CFR 100.24(a)(4);

(ii) Get-out-the-vote activity as described in 11 CFR 100.24(a)(3); or

(iii) Generic campaign activity as defined in 11 CFR 100.25.

(d) *Prohibited solicitations.* A Federal candidate, an individual holding Federal office, and an individual who is an agent acting on behalf of either, must not make any solicitation on behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a), or an organization that has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c) for any election activity other than a Federal election activity as described in paragraph (c) of this section.

(e) *Safe Harbor.* In determining whether a 501(c) organization is one whose principal purpose is to conduct election activities, including activity described in paragraph (c) of this section, a Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either, may obtain and rely upon a certification from the organization that satisfies the following criteria:

(1) The certification is a signed written statement by an officer or other authorized representative of the organization with knowledge of the organization's activities;

(2) The certification states that the organization's principal purpose is not to conduct election activities, including election activity described in paragraph (c) of this section; and

(3) The certification states that the organization does not intend to pay debts incurred from the making of expenditures or disbursements in connection with an election for Federal office (including for Federal election activity) in a prior election cycle.

(f) If a Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either has actual knowledge that the certification is false, the certification may not be relied upon.

Subpart D—Federal Candidates and Officeholders

§ 300.60 Scope (2 U.S.C. 441i(e)(1)).

This subpart applies to:

(a) Federal candidates;

(b) Individuals holding Federal office (*see* 11 CFR 300.2(o));

(c) Agents acting on behalf of a Federal candidate or individual holding Federal office; and

(d) Entities that are directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, one or more Federal candidates or individuals holding Federal office.

§ 300.61 Federal elections (2 U.S.C. 441i(e)(1)(A)).

No person described in 11 CFR 300.60 shall solicit, receive, direct, transfer, spend, or disburse funds in connection with an election for Federal office, including funds for any Federal election activity as defined in 11 CFR 100.24, unless the amounts consist of Federal funds that are subject to the limitations, prohibitions, and reporting requirements of the Act.

§ 300.62 Non-Federal elections (2 U.S.C. 441i(e)(1)(B)).

A person described in 11 CFR 300.60 may solicit, receive, direct, transfer, spend, or disburse funds in connection with any non-Federal election, only in amounts and from sources that are consistent with State law, and that do not exceed the Act's contribution limits or come from prohibited sources under the Act.

§ 300.63 Exception for State party candidates (2 U.S.C. 441i(e)(2)).

Section 300.62 shall not apply to a Federal candidate or individual holding Federal office who is a candidate for State or local office, if the solicitation, receipt or spending of funds is permitted under State law; and refers only to that State or local candidate, to any other candidate for that same State or local office, or both. If an individual is simultaneously running for both Federal and State or local office, the individual must raise, accept, and spend only Federal funds for the Federal election.

§ 300.64 Exemption for attending, speaking, or appearing as a featured guest at fundraising events (2 U.S.C. 441i(e)(3)).

Notwithstanding the provisions of 11 CFR 100.24, 300.61 and 300.62, a Federal candidate or individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party, including but not limited to a fundraising event at which Levin funds are raised, or at which non-Federal funds are raised. In light of the foregoing:

(a) State, district, or local committees of a political party may advertise, announce or otherwise publicize that a Federal candidate or individual holding Federal office will attend, speak, or be a featured guest at a fundraising event, including, but not limited to, publicizing such appearance in pre-event invitation materials and in other party committee communications; and

(b) Candidates and individuals holding Federal office may speak at such events without restriction or regulation.

§ 300.65 Exceptions for certain tax-exempt organizations (2 U.S.C. 441i(e)(1) and (4)).

A Federal candidate, an individual holding Federal office, and an individual agent acting on behalf of either may make the following solicitations of funds on behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a), or an organization that has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c):

(a) *General solicitations.* A Federal candidate, an individual holding Federal office or an individual agent acting on behalf of either, may make a general solicitation of funds, without regard to source or amount limitation, if:

(1) The organization does not engage in activities in connection with an election, including any activity described in paragraph (c) of this section; or

(2)(i) The organization conducts activities in connection with an election, but the organization's principal purpose is not to conduct election activities or any activity described in paragraph (c) of this section; and

(ii) The solicitation is not to obtain funds for activities in connection with an election or any activity described in paragraph (c) of this section.

(b) *Specific solicitations.* A Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either, may make a solicitation explicitly to obtain funds for any activity described in paragraph (c)

of this section or for an organization whose principal purpose is to conduct that activity, if:

(1) The solicitation is made only to individuals; and

(2) The amount solicited from any individual does not exceed $20,000 during any calendar year.

(c) *Voter registration, voter identification, get-out-the-vote activity and generic campaign activity.* This section applies to only the following types of Federal election activity:

(1) Voter registration activity, as described in 11 CFR 100.24(a)(2), during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election; or

(2) The following activities conducted in connection with an election in which one or more Federal candidates appear on the ballot (see 11 CFR 100.24(a)(1)), regardless of whether one or more State candidates also appears on the ballot:

(i) Voter identification as described in 11 CFR 100.24(a)(4);

(ii) Get-out-the-vote activity as described in 11 CFR 100.24(a)(3); or

(iii) Generic campaign activity as defined in 11 CFR 100.25.

(d) *Prohibited solicitations.* A Federal candidate, an individual holding Federal office, and an individual who is an agent acting on behalf of either, must not make any solicitation on behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a), or an organization that has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c) for any election activity other than a Federal election activity as described in paragraph (c) of this section.

(e) *Safe Harbor.* In determining whether a 501(c) organization is one whose principal purpose is to conduct election activities, including activity described in paragraph (c) of this section, a Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either may obtain and rely upon a certification from the organization that satisfies the following criteria:

(1) The certification is a signed written statement by an officer or other authorized representative of the organization with knowledge of the organization's activities;

(2) The certification states that the organization's principal purpose is not to conduct election activities, including election activities described in paragraphs (c) of this section.

(3) The certification states that the organization does not intend to pay debts incurred from the making of expenditures or disbursements in connection with an election for Federal office (including for Federal election activity) in a prior election cycle.

(f) If a Federal candidate, an individual holding Federal office, or an individual agent acting on behalf of either has actual knowledge that the certification is false, the certification may not be relied upon.

Subpart E—State and Local Candidates

§ 300.70 Scope (2 U.S.C. 441i(f)(1)).

This subpart applies to any candidate for State or local office, individual holding State or local office, or an agent acting on behalf of any such candidate or individual. For example, this subpart applies to an individual holding Federal office who is a candidate for State or local office. This subpart does not apply to an association or similar group of candidates for State or local office or of individuals holding State or local office.

§ 300.71 Federal funds required for certain public communications (2 U.S.C. 441i(f)(1)).

No individual described in 11 CFR 300.70 shall spend any funds for a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified), and that promotes or supports any candidate for that Federal office, or attacks or opposes any candidate for that Federal office (regardless of whether the communication expressly advocates a vote for or against a candidate) unless the funds consist of Federal funds that are subject to the limitations, prohibitions, and reporting requirements of the Act. *See* definition of *public communication* at 11 CFR 100.26

§ 300.72 Federal funds not required for certain communications (2 U.S.C. 441i(f)(2)).

The requirements of section 11 CFR 300.71 shall not apply if the public communication is in connection with an election for State or local office, and refers to one or more candidates for State or local office or to a State or local officeholder but does not promote, support, attack, or oppose any candidate for Federal office.

PART 9034—ENTITLEMENTS

25. The authority citation for Part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

26. Section 9034.8 is amended by adding introductory language to paragraph (a) to read as follows:

§ 9034.8 Joint fundraising.

(a) *General.* Nothing in this section shall supersede 11 CFR part 300, which prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities.

* * * * *

Dated: July 16, 2002.

Karl J. Sandstrom,

Vice-Chairman, Federal Election Commission.

[FR Doc. 02–18311 Filed 7–26–02; 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Part 3500

Real Estate Settlement Procedures Act (RESPA); Simplifying and Improving the Process of Obtaining Mortgages To Reduce Settlement Costs to Consumers; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3500

[Docket No. FR–4727–P–01]

RIN 2502–AH85

Real Estate Settlement Procedures Act (RESPA); Simplifying and Improving the Process of Obtaining Mortgages To Reduce Settlement Costs to Consumers

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The Department of Housing and Urban Development is issuing this proposed rule under the Real Estate Settlement Procedures Act (RESPA), to simplify and improve the process of obtaining home mortgages and reduce settlement costs for consumers. The current disclosure requirements under RESPA have not been substantially revised in decades. The current disclosures were comprehensively reviewed as recently as 1998 by HUD and the Board of Governors of the Federal Reserve System, but the problems identified then remain. Nevertheless, since 1998, there have been continuing changes in the marketplace, new products, and greater accessibility of mortgage information via the Internet, all of which are reducing settlement costs and, if properly addressed by Government, could result in greater price reductions for consumers. First, to simplify and improve the mortgage loan process, this proposal would address the issue of loan originator compensation, specifically the problem of lender payments to mortgage brokers, by fundamentally changing the way in which these payments in brokered mortgage transactions are recorded and reported to consumers. Second, it would significantly improve HUD's Good Faith Estimate (GFE) settlement cost disclosure and HUD's related RESPA regulations to make the GFE firmer and more usable, to facilitate shopping for mortgages, to make mortgage transactions more transparent, and to prevent unexpected charges to consumers at settlement. Finally, the rule would promote competition by removing regulatory barriers to allow guaranteed packages of settlement services and mortgages to be made available to consumers, to simplify shopping by consumers and further reduce settlement costs. The proposed rule also includes proposed, revised forms and solicits comments on additional changes including changes to HUD's settlement disclosure form and disclosure requirements.

DATES: Comment Due Date: Deadline for comments on this proposed rule, including comments on the proposed information collection requirements: October 28, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed 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.

HUD also invites interested persons to submit comments on the proposed information collection requirements of this proposed rule. Comments should refer to the above docket number and title, and should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ivy Jackson, Acting Director, Interstate Land Sales and RESPA Division, Room 9146, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–0502 (this is not a toll-free number) or for legal questions Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, or Steven J. Sacks or Teresa L. Baker (Senior RESPA Attorneys); Room 9262, telephone (202) 708–3137. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. The address for the above listed persons is: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

I. Introduction

The American mortgage finance system is justifiably the envy of the world. It has offered unparalleled financing opportunities under virtually all economic conditions to a very wide range of borrowers that, in no small part, have led to the highest homeownership rate in the Nation's history. At the same time, however, the process of financing or refinancing a home, which is regulated under RESPA, 12 U.S.C. 2601 *et seq*., remains too complicated, too costly, and too opaque for many borrowers. The monies needed to close on a home are a significant impediment to homeownership, and settlement costs are a significant component of these costs. In light of the Administration's commitment to reach even higher levels of homeownership, the RESPA regulatory scheme deserves particular scrutiny and necessary reform.

The current disclosure requirements under RESPA have not been substantively revised in decades. Although the RESPA disclosures were comprehensively reviewed as recently as 1998 by both HUD and the Board of Governors of the Federal Reserve System, the problems identified in that review remain largely unaddressed.

Recent judicial developments regarding lender [1] payments to mortgage brokers [2] (yield spread premiums and other named payments based on borrowers' transactions) have heightened the importance of increasing borrower awareness regarding how mortgage brokers are paid and how borrowers can benefit from payments made by lenders based on mortgages exceeding par interest rate.[3] Some borrowers [4] understand, agree to, and properly use higher interest rates to lower up front settlement costs. Others report, however, that they paid substantial origination costs in up front fees for mortgages and then learned that they were charged interest rates higher than those they qualified for merely to support an additional payment to their mortgage broker.

Under the current rules, many borrowers are provided estimated settlement cost information on a GFE only after paying a significant fee required by a loan originator,[5] which prevents the borrower from shopping among additional originators using the

[1] The term ''lender'' is used throughout this document to mean any person who is the ''real source of funds'' for a federally related mortgage loan.

[2] Except as specifically described in footnote 17, the term ''mortgage broker'' is used throughout the document to mean a person (not an employee of a lender) who table funds or acts an intermediary in a federally related mortgage loan. Mortgage brokers that are the ''real source of funds'' for a federally related loan are not regarded as brokers in such transactions.

[3] The term ''par interest rate'' is used throughout this document to mean the interest rate at which there is not payment made by the lender to the borrower or from the borrower to the lender.

[4] The terms ''consumer'' and ''borrower'' are used interchangeably throughout the document.

[5] The term ''loan originator'' is used throughout this document to refer to lenders and mortgage brokers.

GFE. Also, when borrowers receive estimated settlement cost information after applying for a mortgage, the estimates are often unreliable and prove too low. Final charges at settlement often include additional surprise ''junk fees,''[6] which increase the original estimates. HUD's current rules provide little guidance on the standards that originators should be held to in providing good faith settlement cost estimates.

By requiring a long listing on the GFE of each estimated settlement charge, the current disclosure fails to highlight the major costs and seems to lead only to a proliferation of charges without any actual increase in the work performed or enhanced borrower understanding to assist in shopping for services and guard against unnecessary charges. The current requirements allow an individual such as a loan originator, to charge several fees for origination, document preparation, and document review. It is difficult for borrowers to distinguish or understand the precise purpose of these various itemized services provided by the same originator. Excessive itemization thus enables originators to charge more than if the borrower could review and shop the total origination charges. The same holds true for title and other third party services. The types of fees charged by loan originators, title agents and other service providers have multiplied in recent years making it steadily more difficult for borrowers to compare settlement costs.

Industry advocacy groups have indicated that they support better disclosure of mortgage broker compensation specifically and loan origination charges in general. Consumer groups have called for protections against yield spread premiums that were not bargained for, more shoppable settlement cost disclosures, and much firmer interest rates and settlement service costs.

Settlement cost disclosures need to be improved so that the information they provide is simpler, clearer, more reliable, and reasonably available to facilitate shopping, increase competition, and lower settlement costs. Although HUD has called for better disclosures in policy statements and opinions, its regulations need to be updated to establish requirements that are more useful to consumers.

While technology and market forces have played a significant role in lowering costs in the settlement process, it is not clear that under existing rules these benefits are passed on to the borrower in the form of lower settlement prices. HUD's rules implementing Section 8 of RESPA require originators to pass through third party costs without ''mark-ups'' or ''upcharges,'' and generally prohibits volume discount arrangements. Many industry and consumer advocates assert, however, that these regulatory restrictions prevent activities and innovations which would lower prices to borrowers. Many mortgage industry providers also report that while they follow the rules, they are competitively disadvantaged by those who do not because of the lack of adequate enforcement by HUD.

Specifically, some assert that HUD's RESPA rules impede arrangements for the packaging of settlement services, which would allow packagers to draw on their knowledge of the market and familiarity with the products offered by providers of specific services to develop lower settlement cost packages for borrowers. They assert that such packages would increase competition and enhance borrower shopping, lowering costs more effectively than restrictions against referral fees or unearned fees. In the joint HUD and the Board of Governors of the Federal Reserve System, Joint Report to the Congress Concerning Reform of the Truth in Lending Act and the Real Estate Settlement Procedures Act, (July 1998), (hereafter HUD-Federal Reserve Report) both agencies agreed that an exemption should be established to facilitate the provision of settlement services and to improve consumers' ability to shop effectively for a mortgage loan and thereby allow competitive forces to reduce the cost of financing a home. HUD-Federal Reserve Report at 33. At that time, some settlement service providers claimed that such an exemption would legalize kickbacks and referral fees. HUD has examined this concern and concluded that guaranteed packaging arrangements should be permitted in a carefully circumscribed safe harbor. Deregulation, transparency and a free market will wring out kickbacks, referral fees, and other excesses more effectively than the current restrictions and, for this reason, the establishment of a safe harbor is warranted. Under this proposal, settlement service providers may choose either to operate using an improved GFE disclosure, or to participate in packages qualifying for the safe harbor. Accordingly, this dual approach will provide industry and borrowers alike with an opportunity to test both methods where they should be tested, in the marketplace, to determine which is more effective in lowering settlement costs.

Late last year, in Statement of Policy 2001–1, Clarification of Statement of Policy 1999–1 Regarding Lender Payments to Mortgage Brokers, and Guidance Concerning Unearned Fees Under Section 8(b), 66 FR 53052 (October 18, 2001), the Secretary announced his intention to make full use of his regulatory authority to provide clear requirements and guidance regarding the disclosure of mortgage broker fees, and more broadly, to improve the mortgage settlement process to better serve borrowers. The Secretary has established the following principles to guide HUD's RESPA reform and enforcement efforts:

1. Borrowers should receive settlement cost information early enough in the process to allow them to shop for the mortgage product and settlement services that best meet their needs;

2. Disclosures should be as firm as possible to avoid surprise costs at settlement;

3. Regulatory amendments should be utilized to remove unintended barriers to marketing new products, competition, and technological innovations that could lower settlement costs;

4. Many of the current system's problems derive from the complexity of the process; with simplification of disclosures and better borrower education, the loan origination process can be improved; and

5. RESPA should be vigorously enforced to protect borrowers and ensure that honest industry providers have a level, competitive playing field.

In accordance with these principles, this proposed rule would first fundamentally change the way in which mortgage broker compensation is reported by requiring, in all loans originated by mortgage brokers, that any payments from a lender based on a borrower's transaction, other than the payment for the par value[7] of the loan, including payments based upon an above par interest rate on the loan (payments commonly denominated ''yield spread premiums''), be reported on the Good Faith Estimate (and the HUD–1/1A Settlement Statement) as a lender payment to the borrower. Additionally, in brokered loans, any borrower payments to reduce the interest rate (''discount points'') must

[6] ''Junk fee'' is a term used throughout this document to mean any fee charged for a service to a borrower that has little or no value in relation to the charge, and/or may be duplicative, to increase a loan originator's profits.

[7] The term ''par value'' of the loan is used throughout this document to mean the principal amount of the loan.

equal the discount in the price of the loan paid by the lender, and be reported on the GFE (and HUD–1/1A) as borrower payments to the lender. These changes would require mortgage brokers to disclose, at the outset, the maximum amount of compensation they could receive from a transaction, and include the amount in the ''origination fees'' block of the GFE and separately on the GFE Attachment A–1. They would then disclose the amount of the lender payment to the borrower that would be received at the interest rate quoted, if any. Mortgage brokers would be unable to increase their compensation without the borrower's knowledge, either by placing the borrower in an above par loan, and receiving a payment from the lender (yield spread premiums), or by retaining any part of any borrower payment intended to reduce the loan rate (discount points).

Through these changes in reporting requirements, HUD believes that virtually all disputes regarding broker compensation in table funded transactions and intermediary transactions involving yield spread premiums would be resolved. Maximum broker compensation would be clear and brokers would have no incentive to seek out lenders paying the largest yield spread. They would instead be motivated to find the best loan product they can for the borrower. At the same time, HUD believes that since these new disclosure requirements will allow borrowers to focus on the total origination costs for shopping purposes, they will not disadvantage brokers in competition with lenders.

Second, the proposed rule would improve the existing RESPA disclosure scheme by establishing a new required format for the Good Faith Estimate providing greater accuracy and usefulness for borrowers, which would: (1) Inform the borrower that mortgage brokers and other loan originators do not offer loans from all funding sources and cannot guarantee the lowest price or best terms available in the market; (2) explain to the borrower the option of paying his or her settlement costs through the use of lender payments based on higher interest rates, or reducing the interest rate by paying the lender additional amounts at settlement; (3) disclose the loan originators' fees, including the mortgage broker's and lender's total charges to borrowers; and (4) require, in transactions originated by mortgage brokers, that all payments from a lender other than for the par value for the loan (including ''yield spread premiums,'' servicing release premiums, and all other payments from lenders), be reported on the GFE and the HUD–1 Settlement Statement as a lender payment to the borrower and any discount points charged to the borrower must equal the discount in the price of the loan paid by the lender and be reported on the GFE and the HUD–1 Settlement Statement as borrower payments to the lender. These changes will ensure that borrowers receive the full benefit of any payments from or to lenders in brokered transactions, either by reducing their up front settlement costs in exchange for accepting a loan with a higher rate, or by reducing their interest rate and monthly payments by paying additional amounts to the lender at settlement.

The new GFE would also better inform borrowers of the costs of obtaining a mortgage loan from a mortgage broker, as well as from mortgage bankers, lenders or other loan originators, and would better protect borrowers from unnecessary surprise charges at settlement. It would:

(1) Include an interest rate quote in the form of the mortgage loan's note rate and APR, and notification of any prepayment penalties, to assist the borrower in shopping among mortgages;

(2) Disclose subtotals of major categories of settlement costs (including, for example, loan origination costs and title services) to borrowers to eliminate the proliferation of fees by individual settlement service providers, and to allow borrowers to focus on and compare major fees; and

(3) Provide additional shopping information for borrowers that would provide a breakdown of lender and broker origination charges, title insurance and title agent charges, and inform the borrower of lender required and selected services and those third party services that can be shopped for by the borrower.

The proposed rule would further improve the existing disclosure scheme, by amending Regulation X to establish new rules for the provision of the GFE which would: (1) Clarify the basic information needed in an ''application'' to obtain a GFE; (2) limit fees paid by borrowers for the GFE, if any, to the amounts necessary to provide the GFE itself and exclude amounts used to defray later appraisal or underwriting charges, in order to facilitate shopping with GFEs; (3) require that loan originators not exceed the amounts reported on the GFE regarding their total compensation, lender required and selected third party services, and government charges through settlement (absent unforeseeable and extraordinary circumstances); (4) require that loan originators comply with upper limits or ''tolerances'' for specified major settlement charge categories so they do not exceed those stated on the GFE by more than 10%; and (5) clarify that loan originators can make arrangements with third party settlement service providers to lower prices for their customers, provided that these prices and any charges are reflected accurately on the GFE and are not ''marked up'' or ''up charged.''

Third, the proposed rule would remove regulatory barriers to allow packages of settlement services and mortgage loans to be made available to borrowers. These transactions would be even simpler and more transparent for borrowers, and would allow market forces, borrower shopping, and competition to further reduce the costs of settlement services to better achieve the purposes of the statute.

To accomplish this objective, HUD would establish a carefully circumscribed safe harbor under RESPA for ''Guaranteed Mortgage Package'' (GMP) transactions. Any entity (a lender, broker, other settlement service provider, or other entity), hereinafter a ''packager,'' may qualify for the safe harbor as long as it offers a GMP. The packager must offer the GMP to a borrower following his or her submission of application information, but before the borrower's payment of any fee to the packager. The GMP must include: (1) A guaranteed package price for a comprehensive package of loan origination and virtually all other settlement services required by the lender to close the mortgage (including without limitation, all application, origination and underwriting services, the appraisal, pest inspection, flood review, title services and insurance, and any other lender required services except hazard insurance, *per diem* interest, and escrow deposits); (2) a mortgage loan with an interest rate guarantee, whether when the ''Guaranteed Mortgage Package Agreement'' (GMPA) is given or subject to change (prior to borrower lock-in) only pursuant to market changes evident from an observable and verifiable index or other appropriate data or means; and (3) a contract offer in the form of a GMPA to guarantee the price for settlement services and the mortgage interest rate through settlement, if the offer is accepted by the borrower. Additionally, in order to ensure that the borrower receives the settlement package of services and the mortgage loan, the proposed rule would require that the packager sign the GMPA agreeing to provide the Guaranteed Mortgage Package at the Guaranteed Mortgage Package price and that non-lender packagers have a lender sign the

GMPA after borrower acceptance agreeing to provide the loan included in the Guaranteed Mortgage Package.

The GMPA would describe the package as ''including all services required by the lender to close the mortgage'' but would not itemize the specific services to be provided. The packager would, however, be required to inform the borrower if certain items of interest to the borrower are anticipated to be excluded from the package, specifically lender's title insurance, pest inspections, and a property appraisal. Additionally, where the packager anticipates obtaining a pest inspection, appraisal, or credit report, the packager must disclose that information on Attachment A–1 and make such documents available at the borrower's request. The HUD–1 would list the services ultimately provided, but not the charges for specific services. HUD is requesting comments on whether this approach satisfies, or whether alternative approaches should be developed, to ensure that consumers' rights under TILA and HOEPA are protected while facilitating packaging.

The Secretary is exercising the exemption authority under Section 8(c)(5) and Section 19 of RESPA to establish this Guaranteed Mortgage Packaging safe harbor for those Guaranteed Mortgage Package transactions that meet the requirements set forth in this rule. The Secretary has determined that the establishment of this carefully circumscribed safe harbor is necessary to allow this class of transactions to be available to consumers and to achieve the purposes of the Act. The Secretary has concluded that the availability of these packages to consumers at single guaranteed prices with an interest rate guarantee will simplify consumers' shopping for mortgages and allow them to gain the benefit of an active competitive marketplace in which market forces produce lower settlement costs. For the same reasons, the Secretary has determined that payments among packagers and participating settlement service providers and the earnings of packager in Guaranteed Mortgage Packages, as set forth in this rule, shall not be construed as prohibited under Section 8 of RESPA as long as the requirements in this rule are satisfied. Pursuant to Section 8(c)(5) the Secretary has undertaken the necessary consultation with other agency heads as required prior to promulgating this exemption.

The safe harbor from Section 8 will permit the packager to charge for services within the package and will permit payments to, or exchanges of other things of value between entities participating in the package. Section 8 would, however, continue to prohibit any payments for the referral of business, kickbacks, splits of fees and unearned fees between the packager and any of the entities participating in the package on the one hand and entities outside of the package on the other. Under the safe harbor, packagers would provide the GMPA in lieu of a GFE. HUD regards such provision of a GMPA as fully, indeed more than, satisfying the requirements of Section 5 of RESPA that borrowers receive a Good Faith Estimate of the amount of charges for settlement services the borrower is likely to incur. HUD believes that the GMPA, by providing a Guaranteed Mortgage Package price encompassing virtually all settlement charges, along with a limited number of itemized charges, including owner's title insurance, also more than satisfies the requirements of Section 4 of RESPA. Nevertheless, as long as the requirements of the safe harbor are satisfied, HUD is also prepared to exercise the exemption authority under Section 19 to create a safe harbor for packagers from the requirements of Sections 4 and 5 of RESPA, if it deems such an exemption necessary.

The safe harbor is proposed to be available only where the transaction does not result in a high cost loan as that term is defined in the Home Ownership Equity Protection Act, 15 U.S.C.1601(Supp II 1996). The safe harbor also may not be available to mortgages that exceed other limits, or include other features identified through this rulemaking, resulting in unreasonable settlement charges or loan terms inimical to the purposes of RESPA.

The proposed rule's new regulatory requirements will apply to first and second lien transactions, purchase money loans, and refinances. Home equity transactions are addressed in § 3500.7(f), under current RESPA regulation. At Question 26 the Department invites comments on this issue.

The Department also is inviting comments specifically on whether, and to what extent modification of the existing HUD–1/1A Settlement Statement and Instructions, found at 24 CFR part 3500, Appendix A, is necessary to make it comparable to the new GFE. HUD also announces that it plans to revise the Special Information Booklet concerning settlement costs consistent with the final rule, and to develop new booklets for refinance and junior lien transactions.

In this proposed rule at Appendix C and F, the Department is publishing for comment new proposed required formats for the Good Faith Estimate (GFE) and new GMPA. HUD believes that the content of the material in these proposed forms gives the consumer the information needed to shop for loan products and to assist them during the settlement process. HUD recognizes that in order for these forms to be useful shopping tools, they must be consumer friendly. The Department seeks public comment on these proposed forms In addition, the Department will arrange focus groups during the comment period to elicit comments on how to make the material in the new proposed forms as consumer friendly as possible including considering, among other things, how the new proposed forms are best compared by consumers to the HUD–1 and what revisions, if any, to the HUD–1 would be most helpful.

In addition, the Department will facilitate the provision of web based information to consumers on settlement costs and pursue other efforts to ensure that RESPA regulation encourages technological advances to facilitate competition, and lower costs and prices to consumers. Beyond this rulemaking, the Department is examining possible changes to its rules to facilitate electronic mortgage transactions consistent with the Electronic Signatures in Global and National Commerce Act, Public Law 106–229. The Department will also undertake efforts with Federal and State regulators and others to better address technological changes to lower costs.

Additionally, the Department plans to finalize the 1997 Section 6 transfer of servicing proposed rule; however, in the meantime the Section 6 language in the statute may be provided in conjunction with the GFE. Separate from this rulemaking, the Secretary is increasing the resources dedicated to enforcing and regulating RESPA.

Following the background materials, this proposal includes a description of today's proposed rule, specific questions for public comment, and proposed rule language. Public comment on this proposal will be important to formulating a final rule that is consistent with RESPA's purpose, workable in the marketplace, and best serves the financing needs of America's families.

II. General Background

A. Legal Authority

The Department is proposing this rule in accordance with 5 U.S.C. 552, Sections 19 and 8(c)(5) of the Real Estate

Settlement Procedures Act of 1974 (12 U.S.C. 2617).

RESPA Overview

In 1974, Congress enacted the Real Estate Settlement Procedures Act (Pub. L. 93–533, 88 Stat. 1724, 12 U.S.C. 2601 *et seq.*) after finding that ''significant reforms in the real estate settlement process are needed to ensure that borrowers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from the unnecessarily high settlement charges that have developed in some areas of the country.'' *Id.* RESPA's stated purpose is to ''effect certain changes in the settlement process for residential real estate that will result:

(1) In more effective advance disclosure to home buyers and sellers of settlement costs;

(2) In the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services;

(3) In a reduction in the amounts home buyers are required to place in escrow accounts established to ensure the payment of real estate taxes and insurance; and

(4) In significant reform and modernization of the local record keeping of land title information.'' Id.

RESPA's requirements apply to transactions involving ''settlement services'' for ''federally related mortgage loans.'' Under the statute the term ''settlement services'' includes any service provided in connection with a real estate settlement.[8] The term ''federally related mortgage loan'' is broadly defined to encompass virtually all purchase money and refinance mortgages.[9] Section 4(a) of RESPA requires the Secretary to develop and prescribe ''a standard form for the statement of settlement costs which shall be used * * * as the standard real estate settlement form in all transactions in the United States which involve federally related mortgage loans.'' The rule further requires that the form ''conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement. * * *'' Section 5 requires the Secretary to prescribe a Special Information Booklet for borrowers. Section 5(c) requires that a Good Faith Estimate (GFE) be provided at or within 3 days of loan application, authorizes the Secretary to prescribe the contents of the GFE, and requires that the GFE state ''the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the Secretary.'' Notice of transfer of servicing language was added to RESPA at Section 6 in 1990 and amended most recently in 1996, and requires notification to borrowers at the time of application for the mortgage, and during the life of the loan, of whether the servicing of the loan may be or has been assigned, sold, or transferred.

Section 8(a) prohibits any person from giving and any person from accepting ''any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise,'' that real estate settlement service business shall be referred to any person. 12 U.S.C. 2607(a). Section 8(b) prohibits anyone from giving or accepting ''any portion, split, or percentage of any charge made or received'' for the rendering of a real estate settlement service ''other than for services actually performed.'' 12 U.S.C. 2607(b). Section 8(c) of RESPA provides, in part, that ''[n]othing in [Section 8] shall be construed as prohibiting * * * (2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.'' * * * or ''(5) such other payments or classes of payments or other transfers as are specified in regulations prescribed by the Secretary, after consultation with the Attorney General, the Secretary of Veterans Affairs, the Federal Home Loan Bank Board,[10] the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System and the Secretary of Agriculture.'' 12 U.S.C. 2607(c)(2).

Section 9 forbids any seller of property from requiring buyers to purchase title insurance covering the property from any particular title company as a condition of sale. Section 10 limits the amounts that lenders or servicers may require borrowers to deposit in escrow accounts, and requires that borrowers be provided with both initial and annual escrow account statements. Section 12 prohibits lenders and loan servicers from imposing any fee or charge on any other person for the preparation and submission of the Settlement Statement, the escrow account statements required under Section 10(c), or any disclosures required by the Truth in Lending Act.

Section 19 of RESPA specifically authorizes the Secretary ''to prescribe such rules and regulations, * * * and to grant such reasonable exemptions for classes of transactions * * *, as may be necessary to achieve the purposes of [RESPA].''

B. Background

HUD's RESPA Rules

In 1975, HUD promulgated its first set of RESPA rules including limited disclosure requirements. Real Estate Settlement Procedures and Cost, 40 F.R. 22448 (1975). These rules included a requirement that the HUD–1 form be given to borrowers within seven days of a loan commitment, with the provision that estimates were permitted for those items the lender could not accurately provide cost information for at the time of loan commitment. Congress amended the RESPA statute in 1976 and included a requirement that borrowers be provided with a Good Faith Estimate along with the special information booklet at, or within 3 days of a loan application. Following these amendments, HUD promulgated rules in 1977 that included a suggested format for the GFE and requirements for its provision to borrowers at or within 3 days of application, as well as a Uniform Settlement Statement, designated as the HUD–1, to itemize settlement charges to borrowers in every settlement involving a federally related mortgage loan where there is a borrower

[8] These services include, but are not limited to, ''title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, the origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans), and the handling of the processing, and closing of settlement.'' 12 U.S.C. 2602(3).

[9] Specifically, the term covers mortgages ''secured by a first or subordinate lien on residential real property (including individual units of condominium and cooperatives) designed principally for the occupancy of one to four families''; mortgages made ''in whole or in part by any lender the deposits or accounts of which are insured by the Federal Government or is made in whole or in part by any lender which is regulated by any agency of the Federal Government'' or ''insured, guaranteed, supplemented or assisted in any way by HUD or any officer or agency of the Federal Government,'' intended to be sold to Fannie Mae, Ginnie Mae, Freddie Mac or an institution from which it will be purchased by Freddie Mac, or is made in whole or in part by any loan originator, among other things, ''who makes or invests in residential real estate loans aggregating more than $1,000,000.00 per year.'' 12 U.S.C. 2602(3).

[10] The Federal Home Loan Bank Board (FHLBB) was abolished Effective October 8, 1989, by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, (Pub. L. 101–73). Its successor agency, the Office of Thrift Supervision, Department of the Treasury, assumed the FHLBB's regulatory functions.

and a seller, along with instructions and requirements for its use.

On November 2, 1992, HUD amended its rules to implement the 1984 amendments to RESPA establishing a ''controlled business exemption'' (now known as an ''affiliated business exemption''), a controlled (now known as an ''affiliated'') business disclosure to be provided at the time of a referral, and a disclosure of required providers to accompany the GFE. 57 FR 49600. The 1992 amendments also made other significant additions and changes, including defining the term mortgage broker,[11] and applying disclosure requirements to mortgage brokers, as more fully discussed below. In 1994, at 59 FR 6506, HUD amended its rules to conform with the 1992 amendments to the law covering refinancings and junior lien transactions. At that time, HUD promulgated a new disclosure form, the HUD–1A, for use in refinancing and subordinate loan transactions where there is no seller. While the 1992 and 1994 amendments necessitated additional disclosures, the formats of the GFE and HUD–1, and the disclosure requirements, have remained substantially unchanged since they were originally established in 1977.

Contents of Good Faith Estimate and the HUD–1

HUD's RESPA rules require that lenders and mortgage brokers who are not exclusive agents of lenders provide a GFE to all applicants for federally related mortgage loans, and contain a suggested format in Appendix C to 24 CFR part 3500. The suggested GFE format lists twenty common settlement services and provides spaces for the charges for such services. The instructions indicate that any other possible services and charges should also be listed.[12] The GFE provides a place for the ''amount of or range'' of each charge that the borrower is likely to incur in connection with the settlement. Between the name and amount of each charge is a reference to where the same charge will be disclosed on the HUD–1 or HUD 1–A at settlement. If the lender requires the use of particular settlement service provider(s) and requires the borrower to pay for any portion of such provider's services, the rules require that the GFE state: that the use of the provider is required and that the estimate is based on the selected provider's price; the provider's name, address and telephone, and the nature of any relationship between the provider and the lender.[13] The current GFE does not identify the particular items that the borrower may shop for after he has selected a lender or broker, such as a title or settlement agent, title insurance, and a pest inspector.

The HUD–1, described in detail in Appendix A of HUD's RESPA rules, discloses the charges at settlement in major groupings or series. The left hand column on the front of the HUD–1 summarizes the borrower's transaction, listing the cash due at settlement from the borrower, as a result of the gross amounts due less any amounts paid by or on behalf of the borrower prior to settlement. This part of the HUD–1 lists credits to the borrower as well as the total settlement charges due from line 1400 on the back of the form. The right hand column on the front of the HUD–1 summarizes the seller's transaction, listing the total amount due to the seller as the gross amount due to the seller adjusted for items such as settlement charges to the seller and the payoff(s) of any mortgages, and any other items due from seller (such as taxes), to arrive at a total amount due seller.

The 700 series of the HUD–1 lists real estate broker commissions; the 800 series lists origination fees and certain third party settlement services payable in connection with the loan; the 900 series lists items required by the lender to be paid in advance; the 1000 series lists reserves deposited with lender; the 1100 series lists all title related charges; the 1200 series lists government charges; the 1300 series lists any additional settlement charges; and line 1400 discloses the total settlement charges.

The current GFE and HUD–1/1A forms require a listing of the settlement charge for each service, which appears to have led to an increasing proliferation of enumerated services by individual settlement service providers (e.g., loan originators, title agents, etc.) and an artificial separation and inflation of the total charges of certain settlement service providers resulting in higher total costs to borrowers than a more consolidated list would provide. For example, the current requirements encourage loan originators to charge for several separate ''services''—origination, document preparation, document review. Similarly, title service providers are required to separate their charges into ''abstract,'' ''document preparation,'' ''attorney's fees,'' and other charges. Moreover, neither the GFE nor the HUD–1 specify the total amount of fees that each major recipient receives and retains, including the lender, the broker, and the title agent. It is reported that some originators charge ''junk'' fees for ''services'' to increase profits by filling in as many blank lines on the form as possible. It also has been reported that some originators compete on rate and points when giving quotes and then charge a variety of additional fees to increase their profits.

Provision of the Good Faith Estimate

The RESPA rules require that the loan originator must provide the GFE either by delivering it or placing it in the mail to the borrower not later than three business days after a loan application [14] is received or prepared. In practice, loan originators frequently insist on the borrower's completion of a full application form and payment of a significant fee to cover the costs of an appraisal and credit check before a GFE is provided. Therefore, by the time that the borrower receives a GFE he or she has typically already selected a particular loan originator, and paid substantial fees, and is highly unlikely to shop further for another loan originator. In addition, because the GFE is not generally provided until the borrower applies for a loan, the form does not provide borrowers with sufficient opportunity to focus on and compare the full costs of the originator and other major recipients of fees, nor does it indicate clearly other individual settlement services including title services that the borrower may shop for. Borrowers must shop on their own without the aid of a GFE.

Current Definition of ''Good Faith''

HUD's RESPA rules currently require that a GFE must be made in good faith, bear a ''reasonable relationship'' to the charge the borrower is likely to be

[11] HUD's RESPA rules, found at 24 CFR part 3500 (Regulation X), currently define a ''mortgage broker'' to be ''a person (not an employee or exclusive agent of a lender) who brings a borrower and lender together to obtain a federally-related mortgage loan, and who renders services'' as described in the rule (24 CFR 3500.2(b)).

[12] Specifically, the GFE format lists the loan origination fee, loan discount fee, appraisal fee, credit report, inspection fee, mortgage broker fee, CLO access fee, tax related service fee, interest at ''dollars'' per day, mortgage insurance premium, hazard insurance premium, reserves, settlement fee, abstract or title search, document preparation fees, attorney's fee, title insurance, recording fees, city/county tax stamps, state tax, survey, pest inspection and the form provides space for additional fees that may be added.

[13] 24 CFR 3500.7(e)(3). Except for a provider that is the lender's chosen attorney, credit reporting agency, or appraiser, if the lender is in an affiliated business relationship with the provider (see § 3500.15), the lender may not require the use of that provider.

[14] The rules define an ''application'' as the submission of a borrower's financial information in anticipation of a credit decision involving a federally related loan on a specific property. 24 CFR 3500.2(b).

required to pay at settlement, and ''be based upon experience in the locality of the mortgaged property.'' 24 CFR 3500.7(c)(2). The rules, however, do not establish any bright lines or tolerances to assure that there is, in fact, a reasonable relationship between these estimates and final costs at settlement. Although the rules do require additional disclosure where the lender requires the use of a particular provider, stating that the lender must ''make its estimate based upon the lender's knowledge of the amounts charged by the provider,'' the rules do not establish any bright lines for the loan originator with respect to their estimates of these or other third party charges, or even with respect to their own charges. Id.[15] Under HUD's rules, charges on the Good Faith Estimate are to be disclosed as ''a dollar amount or range of each charge'' which will be listed in section L of the HUD–1 or HUD–1A. Frequently, borrowers report to HUD that brokers' or lenders' own charges at settlement include one or more additional fees that were not disclosed on the GFE, or that the charges for particular services rendered by or for the loan originator substantially exceed the estimated amounts. RESPA contains no sanctions for inaccurate or incomplete GFEs, or even for outright failure to provide a GFE. Bank and other regulators do enforce these requirements with respect to regulated institutions, although other originators are not subject to such enforcement.

Use and Provision of the HUD–1, HUD–1A

Settlement agents are required to use the HUD–1 in every settlement transaction involving a federally related mortgage loan in which there is a borrower and a seller.[16] The settlement agent is required to complete the HUD–1 in accordance with the instructions at Appendix A to HUD's RESPA rules and to deliver a completed HUD–1 (or HUD–1A where applicable) at or before the settlement to the borrower, the seller (if applicable), and the lender (if the lender is not the settlement agent) or their agents. 24 CFR 3500.8(a). RESPA and HUD's RESPA rules permit the borrower to inspect, a day before settlement, the HUD–1 or HUD–1A containing those items that are known to the settlement agent at the time of the inspection. 24 CFR 3500.10.

Mortgage Brokers [17]

At the time RESPA was enacted, single-family mortgages were mainly originated and held by savings and loans, commercial banks, and mortgage bankers. During the 1980's and 1990's, the rise of secondary mortgage market financing resulted in the emergence of new retail entities, notably mortgage brokers, to compete with traditional mortgage originators, lending institutions, and mortgage bankers. Today, mortgage brokers are estimated to originate more than 60% of the nation's mortgages.

Mortgage brokers essentially provide retail lending services, including counseling borrowers on loan products, collecting application information, ordering required reports and documents, and otherwise gathering data required to complete the loan package and mortgage transaction. As retailers, brokers also provide the borrower and lender with goods and facilities such as reports, equipment, and office space to carry out retail functions.[18] The amount of work mortgage brokers provide in particular transactions depends, in part, on the level of difficulty involved in qualifying applicants for particular loan programs. Differences in credit ratings, employment status, levels of debt, assets, and experience frequently translate into varying degrees of effort required to originate a loan. Also, mortgage brokers may be required to perform different components of origination services (i.e., underwriting) pursuant to specific agreements with individual wholesale lenders.[19]

Mortgage brokers have various means of obtaining funding for the loans they originate. Some mortgage brokers close mortgage loans in their own name but, at the time of settlement, transfer the loan to a lender that simultaneously advances funds for the loan. Immediately after the loan is consummated, the mortgage broker delivers the loan package to that lender, including the promissory note, mortgage, evidence of insurance, and all rights in the loan that the mortgage broker held. This type of transaction is known in the lending industry, and defined in HUD's regulations, as ''table funding.''

Some mortgage brokers function purely as intermediaries between borrowers and lending sources. They originate loans by providing loan processing and arranging for the provision of funds by lenders. Loans which they originate are closed in the names of the funding lenders.

Other mortgage brokers originate loans that are closed in the mortgage brokers' names, fund the loans temporarily using their own funds or a warehouse line of credit, and sell the loans after settlement. These transactions by mortgage brokers are treated similarly to loans made by mortgage bankers, and other lenders, and hence any compensation received by the mortgage broker, as a result of the bona fide transfer of a loan obligation in the secondary market, is not subject to Section 8 of RESPA due to the ''secondary market transaction'' exemption. 24 CFR 3500.5(b)(7).

Mortgage Broker Functions and Compensation

Since the advent of mortgage brokers in the mid-1980s, there has been confusion among borrowers concerning the mortgage broker's functions and fees,—i.e., whether brokers do or do not shop on the borrower's behalf, as well as how they are paid and how much they are paid, and by whom.

Some mortgage brokers indicate to borrowers that they will, in essence, act as their agent to shop for the best mortgage loan for them.[20] Other brokers state that they work with a number of funding sources to provide loans, and

[15] While the current rules need improvement, they are not entirely without standards. They do require estimates to be in good faith and tell the borrower what charges he or she is likely to incur at settlement based on the originator's experience. For example, on July 5, 2002, HUD issued a letter to the State of Washington that indicated that a range of charges of 0–$15,000 on a GFE for points did not meet these requirements.

[16] 16 Under current rules, where there is a borrower and no seller, such as in a refinance or a subordinate lien loan, the HUD–1 may be utilized using the borrower's side of the HUD–1 statement, or the HUD–1A may be used as an alternative.

[17] In the discussion of mortgage brokers in the background section of this preamble, the term is being used in a broader sense than the proposed amended HUD definition, and the way the term is used throughout the rest of the proposed rule. In this section when referring to mortgage brokers the term also includes those individuals who are the real source of funds through a warehouse line of credit or otherwise.

[18] HUD Statement of Policy-1999–1 Regarding Lender Payments to Mortgage Brokers provided a list of compensable loan origination services originally developed by HUD in a response to an inquiry from the Independent Bankers Association of America (IBAA), which HUD considers relevant in evaluating mortgage broker services. In analyzing each transaction to determine if services are performed by mortgage brokers, HUD stated that it believes the 1999 Statement of Policy should be used as a guide. As stated there, the IBAA list is not exhaustive, and while technology is changing the process of performing settlement services, HUD believes that the list is still a generally accurate description of settlement services.

[19] The terms ''wholesale lender'' or ''funding lender'' are used throughout the document to mean a lender who does not originate the mortgage loan but provides funds for the loan and may purchase the loan.

[20] In some states, for example North Carolina, mortgage brokers may be held to have an agency relationship or a legal responsibility to the borrower.

will arrange a favorable loan with one of them for their borrower. Whether brokers serve as the borrower's agent as a strict legal matter, the fact is that many brokers are perceived by borrowers as shopping on their behalf for the best loan to meet the borrower's needs. This perception frequently deters borrowers from shopping themselves for the loan originator and mortgage product that best meets their needs.

Mortgage brokers receive compensation for their services by various methods. A broker may be paid directly by the borrower, indirectly by the lender or wholesale lender who purchases the mortgage loan, or through a combination of both. Brokers may charge borrowers directly at or before settlement for loan origination as well as for other services including the application, document preparation and document review. In some cases, broker origination charges may be denominated as an origination fee and sometimes as an ''origination point'' (one point equals 1% of the loan amount), while other fees for named services (e.g., application fees, document preparation fees, processing fee, etc.) are charged as separate cost items on the GFE.[21] Some brokers receive both percentage based fees and fees for named services.

Where brokers receive a payment for compensation from someone other than the borrower, most commonly the lender, it is called indirect compensation. Such indirect compensation from lenders is ordinarily based upon an above market interest rate on the loan entered into by the broker with the borrower. This type of compensation is often referred to as a ''yield spread premium,'' (YSP) though it sometimes shows up under a different label, e.g. servicing release premium.

The use of a YSP can reduce up front settlement costs to a borrower by building these costs into the borrower's interest rate and monthly payments over the life of the borrower's loan. In issuing RESPA Policy Statement 2001–1, discussed in greater detail below, HUD stated that borrowers should continue to have the choice of paying their total settlement costs up-front or using the yield spread premium payment as a credit to pay all or part of these costs. Consumer advocates assert, however, that all too frequently brokers place the borrower in an above par rate loan without the borrower's knowledge, provide the borrower with little or no benefit in the form of reduced up front costs, and use the YSP payment solely or primarily as a means of increasing their total compensation.

Current Broker Disclosure Requirements

Under HUD's current rules, where mortgage brokers originate and table fund loans or act as intermediaries, they are required to disclose their direct charges and any indirect payments to be made to them on the GFE, and deliver or mail it to the borrower no later than 3 days after loan application. 24 CFR 3500.7(a)–(c). Such disclosure must also be provided to borrowers, as a final figure, at settlement on the HUD–1 and HUD–1A settlement statement. 24 CFR 3500.8. In table funded and intermediary transactions, direct broker fees are treated like the fees of other settlement service providers, such as title agents, attorneys, appraisers, etc, whose fees are disbursed at or before settlement. However, HUD's current rules require that on the GFE and HUD–1, lender-paid (indirect) mortgage broker fees are to be shown as ''Paid Outside of Closing'' (P.O.C.), listed outside the columns, and excluded from the computation of borrower's total settlement costs. 24 CFR 3500.7(a)(2). This approach does not assure that YSPs are understood and credited to the borrower to reduce up front settlement costs.

Disclosure of Fees by Lenders

Lenders are also compensated by borrowers through various methods. When lenders originate mortgage loans, they may charge borrowers directly at or before settlement for loan origination as well as for other services including the application, document preparation and document review. In some cases, lender origination charges may be denominated as an origination fee and sometimes as an ''origination point'' (one point equals 1% of the loan amount), while other fees for named services (e.g., application fees, document preparation fees, processing fee, etc.) are charged as separate cost items on the GFE.[22]

Lenders may also require ''discount points'' from the borrower for the stated purpose of lowering the interest rate of the loan. It is unclear to what extent discount points represent the present value of the difference between the par mortgage interest rate and the rate on the loan on one hand, or provide additional compensation to lenders on the other.

The functional equivalent of a yield spread premium may also be present in loans originated by lenders. Lenders routinely offer loans with low or no up front costs required at settlement. They can do so just like brokers do by charging higher interest rates for these loans and then recouping the costs by selling the loans into the secondary market for a premium representing the difference between the interest rate on the loan and the par, or wholesale market interest rate. Alternatively, the lender can hold the loan and earn the above market return in exchange for any lender paid settlement costs.

HUD's current rules require lenders to disclose only direct fees paid to them by borrowers including origination fees or ''origination points'' as well as other direct fees for named services and discount points. However, neither the current GFE, nor the HUD–1, provides totals of all charges paid to the lender. The rules also do not require lenders to disclose indirect fees earned in secondary market transactions from the sale of borrowers' loans. This is because the compensation earned from the bona fide transfer of the loan obligation in the secondary market is exempt from HUD's RESPA rules. HUD's RESPA rules provide ''[i]n determining what constitutes a bona fide transfer HUD will consider the real source of funding and the real interest of the funding lender.'' 24 CFR 3500.5(b)(7). HUD's rules explicitly provide, however, that table-funded mortgage broker transactions are not secondary market transactions. Lender sales into the secondary market are considered secondary market transactions.

Legality of Mortgage Broker Fees

Over the last decade, there has been persistent litigation concerning the legality of indirect fees to mortgage brokers. More than 150 lawsuits have been brought since the mid-1990s seeking class action certification, based in whole or in part on the theory that the indirect fees paid by lenders to mortgage brokers are fees for the referral of business in violation of section 8 of RESPA.[23]

[21] Mortgage broker fees are not always described in the same terms. Sometimes mortgage brokers fees are expressed in straight dollar amounts and sometimes as ''points.'' ''Points'' are charges based on a percentage of the borrower's loan. Points therefore have a dollar equivalent to the borrower.

[22] Lenders' fees are not always described in the same terms. Sometimes lenders' fees are expressed in straight dollar amounts and sometimes as ''points.'' ''Points'' may be used to describe ''origination fees'' or ''discount points'' and both types of points may be charged in the same transaction. ''Points'' are just percentage amounts of the borrowers loans, and these ''points,'' just like any other terms used to describe fees to loan originators, have a dollar equivalent to the borrower.

[23] See e.g., *Mentecki* v. *Saxon Mortgage,* No. 96–1629–A, slip op. (E.D. Va. Jan. 10, 1997). The court held initially that indirect fees to mortgage brokers in the form of ''yield spread premiums'' violated section 8(a) of RESPA as referral fees. However, subsequently, in an order and opinion dated July 11, 1997, the Court refused to certify the class.

Continued

HUD's RESPA rules, amended in 1992 to require disclosure of indirect fees to mortgage brokers, did not explicitly take a position on whether yield spread premiums or any other named class of back-funded or indirect fees paid by lenders to brokers are per se legal or illegal. See Illustrations of Requirements of RESPA, Fact Situations 5 and 12 in Appendix B to 24 CFR part 3500. The rule specifically listed ''servicing release premiums'' and ''yield spread premiums'' as fees required to be itemized on the HUD–1/1A Settlement Statement. Accordingly, while the rule specifically acknowledged the existence of such fees and provided illustrations of how they are to be reflected on HUD disclosure forms, HUD took the position that the rule does not create a presumption of per se legality or illegality.

Between 1992 and 1999, HUD provided various interpretations and other issuances under its RESPA rules stating the Department's position that the legality of a payment to a mortgage broker does not depend on the name of the particular fee. Rather, HUD has consistently advised that the issue under RESPA is whether the total compensation to a mortgage broker is reasonably related to the total value of the goods or facilities actually furnished or services actually performed. If the compensation, or a portion thereof, is not reasonably related to the goods or facilities actually furnished or the services actually performed, there is a compensated referral or an unearned fee in violation of Section 8(a) or 8(b) of RESPA, whether the compensation results from a direct or indirect payment or a combination thereof.

In 1995, as a result of concerns that the requirement that mortgage brokers disclose indirect fees placed mortgage brokers on an unequal footing with other mortgage loan providers, and that information on indirect fees was confusing to borrowers, HUD issued a proposed rule to obtain the public's views on the disclosure and legality of broker fees. 60 FR 47650 (September 13, 1995). At that time, plaintiff borrowers began initiating class action lawsuits claiming that payments to mortgage brokers by lenders were per se illegal. Shortly afterwards, HUD embarked on a negotiated rulemaking on these subjects. See notices published on October 25, 1995 (60 FR 54794) and December 8, 1995 (60 FR 63008).

The 1995–1996 negotiated rulemaking on mortgage broker fees did not result in a final rule. It did, however, result in a clear consensus by rulemaking participants that borrowers were confused about the functions of mortgage brokers and the amounts and sources of their fees. See Report on Negotiated Rulemaking on Mortgage Broker Disclosure—Final Report, A.L.J. Alan W. Heifetz, (July 19, 1996). This confusion may translate into borrowers failing to compare services and fees, thereby paying unnecessarily high settlement costs. Most of the rulemaking participants, except for the representative of the mortgage brokerage industry and one consumer advocate, agreed on a regulatory framework that would create a pre-application agreement between a borrower and a broker fully disclosing the broker's function and compensation, in return for a limited ''safe harbor'' for transactions where these contracts were entered into. In 1997, HUD issued a proposed rule on mortgage broker fees that would have established a safe harbor for brokers who contractually commit to borrowers regarding their total compensation, along the lines agreed to by the majority in the negotiated rulemaking. The proposed rule also provided that during the rulemaking process, a ceiling on the amount of fees eligible for the safe harbor would be established to protect against predatory lending. The rule was strongly opposed by the mortgage brokerage industry and other segments of the mortgage industry. HUD did not finalize the 1997 rule and efforts to do so were soon eclipsed by HUD's effort to clarify its position on the legality of mortgage broker fees under existing law.

1999 Statement of Policy on Lender Payments to Mortgage Brokers

In 1998, in the Conference Report on HUD's 1999 Appropriations Act, Congress directed HUD to clarify its position on the legality of mortgage broker fees and to work with industry, Federal agencies, consumer groups, and other interested parties on a statement of policy on the subject. The Report also stated that Congress never intended payments by lenders for goods or facilities actually furnished or for services actually performed to violate Section 8(a) or (b) of RESPA.

On March 1, 1999, in response to Congress's directive, HUD issued RESPA Statement of Policy 1999–1 Regarding Lender Payments to Mortgage Brokers, following extensive discussions with industry, consumer groups, and essential agreement among them on the interpretation embodied in the Statement. The Statement said that, in applying Section 8 and HUD's regulations to lender payments to mortgage brokers, HUD did not consider such payments to be legal or illegal per se. The Statement said that the ''fees in cases and classes of transactions are illegal if they violate the prohibitions of Section 8 of RESPA.'' 64 FR 10084.

The Statement established a two-part test to determine the legality of lender payments to mortgage brokers under RESPA which requires that: (1) Goods or facilities must actually be furnished or services actually performed for the compensation paid; and (2) payments must be reasonably related to the value of the goods or facilities that were actually furnished or services that were actually performed. In applying this test, HUD stated that total compensation should be scrutinized to assure that it is reasonably related to goods, facilities, or services furnished or performed to determine whether it is legal under RESPA.[24]

As a Statement of Policy, the 1999 Statement interpreted HUD's existing rules. Nonetheless, beyond these rules, the Statement emphasized the importance of disclosing brokerage fees, including yield spread premiums, to borrowers as early as possible in the borrower's process of shopping for a mortgage. See 64 FR at 10087.

The 1999 Statement said:

There is no requirement under existing law that consumers be fully informed of the broker's services and compensation prior to the GFE. Nevertheless, HUD believes that the broker should provide the consumer with information about the broker's services and compensation, and agreement by the consumer to the arrangement should occur as early as possible in the process. Mortgage brokers and lenders can improve their ability to demonstrate the reasonableness of their fees if the broker discloses the nature of the broker's services and the various methods of compensation at the time the consumer

Culpepper v. *Inland Mortgage Corp.,* 953 F.Supp. 367 (N.D. Ala. 1997). The court held that a payment for a loan above market was permissible under section 8(c) of RESPA as payment for a ''good.'' *Barbosa* v. *Target Mortgage,* No. 94–1938, U.S.D.C., Southern District of Florida; *Martinez* v. *Weyerhauser Mortgage,* No. 94–160, U.S.D.C., Southern District of Florida; *Monoz* v. *Crossland Mortgage Company,* Civil Action No. 96–12260, U.S.D.C. for the District of Massachusetts. These last two Federal district courts concluded that yield spread premiums (or differentials) were not per se violations of RESPA and therefore refused to certify class actions on this issue.

[24] The 1999 Statement of Policy also said, ''[t]he Department considers that higher interest rates alone cannot justify higher total fees to mortgage brokers. All fees will be scrutinized as part of total compensation to determine that total compensation is reasonably related to the goods or facilities actually furnished or services actually performed.'' 64 FR 10084.

first discusses the possibility of a loan with the broker. 64 FR at 10087.

Post 1999–1 Statement of Policy Circuit Court Decision

After HUD issued its 1999 Statement of Policy, most Federal District courts held that yield spread premium payments from lenders to mortgage brokers are legal provided that such payments meet the test for legality articulated in the 1999 Statement of Policy and otherwise comport with RESPA. However, in *Culpepper* v. *Irwin Mortgage Corp.,* 253 F.3d 1324 (11th Cir. 2001), the U.S. Court of Appeals for the Eleventh Circuit upheld class certification in a case alleging that yield spread premiums violated Section 8 of RESPA where the defendant lender, pursuant to a prior understanding with mortgage brokers, paid yield spread premiums to brokers based on the lender's use of a rate sheet and the brokers' delivery of above par interest rate loans, without the lender knowing whether, or to what extent, the brokers had performed services. The court concluded that a jury could find that yield spread premiums were illegal kickbacks or referral fees under RESPA where the lender's payments were based exclusively on interest rate differentials reflected on rate sheets, and the lender had no knowledge of what services, if any, the brokers had performed. The court also said that HUD's 1999 Statement of Policy was ambiguous.

Following Culpepper,[25] representatives of the mortgage industry urged HUD to issue a clarification to the 1999 Statement of Policy to make clear that the lenders could make payments to brokers through rate sheets and that, to properly apply the 1999 test, all payments must be examined, not simply the payment from the lender, to determine if the broker's total compensation is reasonable. These representatives said that if the Culpepper interpretation prevailed, without further guidance from HUD, the industry could no longer offer yield spread premiums as an option to borrowers to lower their up front settlement costs.

Representatives of the mortgage industry, including representatives of the Mortgage Bankers Association and the National Association of Mortgage Brokers, assured the Department that following a clarification by HUD, they also would support a HUD rule requiring improved fee disclosure.[26]

Statement of Policy 2001–1

On October 17, 2001, the Department issued Statement of Policy 2001–1, Clarification of Statement of Policy 1999–1 Regarding Lender Payments to Mortgage Brokers, and Guidance Concerning Unearned Fees Under Section 8(b). The 2001 Policy Statement reiterated and clarified the test articulated in the 1999 Statement of Policy that where compensable services are performed, application of both parts of the HUD test is required before a determination can be made regarding the legality of a lender payment to a mortgage broker. 66 FR 53052, 53054–55. The 2001 Statement also said:

> [n]either Section 8(a) of RESPA nor the 1999 Statement of Policy supports the conclusion that a yield spread premium can be presumed to be a referral fee based solely upon the fact that the lender pays the broker a yield spread premium that is based upon a rate sheet, or because the lender does not have specific knowledge of what services the broker has performed. 66 FR 53052, 53055.

The 2001 Statement of Policy also interpreted HUD's existing rules then further detailed what HUD regards as meaningful disclosure of mortgage broker fees to borrowers:

> In HUD's view, meaningful disclosure includes many types of information: What services a mortgage broker will perform, the amount of the broker's total compensation for performing those services (including any yield spread premium paid by the lender), and whether or not the broker has an agency or fiduciary relationship with the borrower. The disclosure should also make the borrower aware that he or she may pay higher up front costs for a mortgage with a lower interest rate, or conversely pay a higher interest rate in return for lower up front costs, and should identify the specific trade-off between the amount of the increase in the borrower's monthly payment (and also the increase in the interest rate) and the amount by which up front costs are reduced. HUD believes that disclosure of this information, and written acknowledgment by the borrower that he or she has received the information, should be provided early in the transaction. Such disclosure facilitates comparison shopping by the borrower, to choose the best combination of up front costs and mortgage terms from his or her individual standpoint. HUD regards full disclosure and written acknowledgment by the borrower, at the earliest possible time, as a best practice. 66 FR 53056.

The 2001 Policy Statement also specifically acknowledged the utility to borrowers of treating and reporting all interest rate based lender payments as monies belonging to the borrower. The Policy Statement endorsed this approach, stating:

> [I]t has been suggested to the Department that the yield spread premium should be reported as a credit to the borrower in the ''200'' series, among the ''Amounts Paid by or in Behalf of Borrowers.'' The homebuyer or homeowner could then see that the yield spread premium is reducing closing costs, and also see the extent of the reduction.
>
> HUD believes that improved early disclosure regarding mortgage broker compensation and the entry of yield spread premiums as credits to borrowers on the GFE and the HUD–1 settlement statement are both useful and complementary forms of disclosure. The Department believes that used together these methods of disclosure offer greater assurance that lender payments to mortgage brokers serve borrowers' best interests. 66 FR 53056.

C. HUD's Commitment to Mortgage Reform

The HUD-Federal Reserve Report

Since the mid-1990s, HUD has been examining ways to improve the mortgage process for borrowers to lower settlement costs.[27] In June of 1998, in response to a Congressional directive in Section 2101 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009), HUD and the Board of Governors of the Federal Reserve (''the Board'') issued a joint report on reforming RESPA. The HUD-Federal Reserve Report. The Report called for legislative changes to reform both laws. The Report did not attempt to differentiate where changes could be made under existing law pursuant to the Board's and HUD's existing regulatory authorities from areas where new legislation was required. Subsequently, the Board has exercised its regulatory authority under TILA to effectuate certain of the Report's recommendations. See 66 FR 65604, December 20, 2001.

Major Findings of the Report

The HUD-Federal Reserve Report posed and addressed several questions involving the disclosure scheme under both RESPA and TILA, and both HUD

[25] In this proposed rule Culpepper refers to *Culpepper* v. *Irwin Mortgage Corp.,* 253 F.3d 1324 (11th Cir. 2001). There were earlier reported decisions in this same litigation.

[26] Letter to Secretary Martinez, Submitted by America's Community Bankers, American Banking Association, Consumer Mortgage Coalition, and Mortgage Bankers Association of America (December 27, 2001); National Association of Mortgage Brokers, Position Paper: Prospective HUD Rulemaking Concerning Mortgage Originator Disclosure, Correspondence to the Department (December 4th, 2001).

[27] HUD and others have considered proposals to permit lenders to package settlement services almost from the time the law was enacted. Senator Proxmire introduced S. 2775 which would have required lenders to bear certain settlement costs with the view that the lenders have the sophistication and bargaining power to keep costs down.

and the Board recommended in part [28] that:

- Loan originators be required to provide firmer quotes for settlement costs disclosed under RESPA; and
- The timing of RESPA and TILA disclosures to borrowers be advanced, so that borrowers receive them earlier and use them to shop.

In order to achieve firmer cost information, both agencies also recommended that lenders and other providers be given the choice of:

- Offering a ''packaging'' or a guaranteed cost approach; or
- Providing a GFE where estimated costs would be subject to tolerances, to improve the current disclosure scheme by reducing the instances in which consumers may incur additional costs at closing.

Both agencies recommended an exemption from Section 8 to facilitate packaging. HUD also said that to receive the exemption, both the settlement costs and the interest rate on a mortgage should be guaranteed.

Timing of Disclosures

The Report observed that in home secured transactions, the borrower currently receives TILA or RESPA disclosures at several different times. Borrowers receive generic information such as HUD's Special Information Booklet at the time of application. Additionally, for residential mortgage transactions, lenders and brokers provide through mailing or delivery within 3 days after application, specific information including the GFE and the initial TILA disclosure disclosing the finance charge and the ''APR'' or ''annual percentage rate'' for the mortgage. TILA § 128(b)(2); Reg. Z § 226.19(a). TILA may require additional new disclosures for home-purchase loans if early disclosures have become inaccurate. See TILA 128(b) and Reg. Z § 226.17(b). A settlement agent gives final disclosures on the HUD–1 at settlement based on information provided by the lender.

Both agencies recommended that the disclosure process could be improved for industry if the timing requirements for disclosures were made more consistent between RESPA and TILA [29] and it would be improved for borrowers if disclosures were given when they would be most useful. In the Report, HUD recommended that generic information, e.g., HUD's Special Information Booklet, be given when the borrower first contacts settlement service providers, including loan originators and real estate agents. Both HUD and the Board also recommended that borrowers be given initial disclosures, including firm information about settlement costs, interest rates and points as early in the shopping process as possible so that they can shop and make informed choices. The HUD-Federal Reserve Report at 41. Although HUD and the Board differed somewhat in their approaches, both indicated that advances in technology and market competition promised to provide borrowers better information at or near the time of application. HUD said that it supported requiring that estimated costs disclosures be provided earlier than three days after application—ideally at first contact with lenders. HUD indicated, however, that while it seeks early disclosures, it recognizes that sometimes there will be a trade-off between having an early disclosure and ensuring that a disclosure is firm and complete enough to allow borrowers to shop and protect against increases in costs. In such cases, HUD recommended that timing requirements be flexible to allow enough time to provide guaranteed information.

Moreover, in the interest of promoting shopping, HUD recommended that borrowers not be required to pay a significant fee to the loan originator prior to receiving initial cost information. Id. at 42.

Providing Firmer Cost Disclosures

In arriving at the recommendation that cost disclosures must be firmer, the Report observed that borrowers reported many instances in which the costs disclosed on the GFE were significantly lower than those actually charged at settlement or that costs were completely left out of the GFE. The HUD-Federal Reserve Report at 20. The Report noted that more reliable settlement cost information could promote shopping. Id. at 32. In recommending that the choice of providing ''guaranteed cost packages'' or a more reliable GFE subject to tolerances be offered, the agencies stated that a dual system would create an opportunity for the market to test whether guaranteed cost arrangements offer more economical and efficient means for consumers to obtain mortgage loans.

Packages/Guaranteed Costs

Under the packaging or guaranteed cost approach envisioned in the Report, the lender or other packager would set a lump-sum price for settlement costs and would be held to that figure from the time the package is agreed to through settlement. Most charges for services that the borrower currently pays at settlement for origination, title work and insurance, credit report, appraisal, document review, inspection, up front mortgage insurance, pest inspection and flood review, etc., would be included in the package.[30] Government charges associated with filing a mortgage or release that can be determined easily also would be included. The Report suggested that any costs excluded from the guaranteed settlement costs would be disclosed as either ''other required costs'' or as ''optional costs.'' ''Other required costs'' would include charges such as per diem interest, which fit the definition of those costs that the borrower will have to pay at settlement, but the amount of which the packager cannot be readily determined at the time the package is provided to the borrower.[31] The Report suggested, however, that there are means for per diem interest to be included in the package; lenders could be required to state a maximum amount

[28] The Report also concluded that the APR and finance charge disclosures under TILA should be retained and improved to include all costs required by the creditor to get the credit and that additional substantive protections should be added to TILA.

[29] Under current TILA rules, Regulation Z, the TILA disclosure may be given simultaneously along with the GFE, TILA § 128 (b); Reg. Z § 226.17(b).

[30] In developing the Report, the agencies considered whether services should be itemized within the package. Some entities claim that for there to be true competition, borrowers must be able to know what is included in each package to compare. These entities point out that borrowers generally like to know what services are included in packages and that without itemization lenders may choose to forego many services for their packages while insisting that nonlenders have more expansive packages, making borrower information and competition impossible. On the other hand, it was observed that a requirement for full itemization of services might lead some packagers to create longer lists, ultimately confusing borrowers and hindering their evaluation of different loans. Also, lenders pointed out that services are performed in large measure to protect their security and when the initial disclosure is provided they may not know what is needed in each case. The Board and HUD concluded that in packages, lenders could disclose the guaranteed amount for settlement costs without any elaboration on the early disclosure, and subsequently provide a list of services actually performed on the final settlement disclosure. Alternatively, lenders could provide a list of services that might be performed on the early disclosure with an explanation, if appropriate, that all items may not be performed, and then indicate on the settlement statement the services actually performed. The Report also observed that disclosing the cost of each service also could present problems, particularly where lenders or other packagers enter into volume-based contracts. The HUD-Federal Reserve Report at 25–26.

[31] Charges for per diem or ''odd days'' interest, which floats along with the interest rate, cover the time between the date of settlement and the date regular monthly interest starts accruing. As an illustration, if a loan closes on January 15 and the first monthly payment (due on March 1) begins to accrue interest on February 1, interest for the days between January 15 and February 1 is generally required to be paid at settlement as per diem interest. Some lenders do not collect per diem interest at settlement but add the amount to the first monthly payment.

based on thirty days (a full month) or to disclose the daily interest to allow borrowers to calculate the actual amount as the date of settlement becomes certain. The Report also suggested that mortgage insurance should be included in the package price even though it is difficult to calculate until final underwriting.

According to the Report ''optional costs'' would include charges that depend on whether the borrower chooses to purchase the service, and on the level of service chosen. The HUD-Federal Reserve Report at 27–28. Examples include owner's title insurance and optional hazard insurance chosen by the borrower.

The Report observed that packagers would arrive at their package prices based on their experience or, more likely, enter into volume-based contracts with affiliated and other settlement service providers for those goods and services required by lenders to close a loan. Id. at 23.

Support for Packaging

Many of the nation's largest mortgage lenders and their representatives expressed support for a ''packaging'' approach. They said that borrowers rarely shop for individual settlement services, and also that borrowers are more interested in the overall price of their mortgage loan than the prices of individual settlement services, and that borrowers would shop for mortgages if all they needed to compare was a single guaranteed price for all the settlement services needed to close the loan. Advocates of packaging said that by packaging services, discounts that would be secured by lenders under these arrangements will be passed on to borrowers. Through this dynamic and by making it easier for borrowers to shop, costs would be lowered.[32]

In the development of the Report, entities other than lenders, including real estate firms and affinity groups, also expressed some interest in packaging. These entities asserted that if packaging was restricted only to lenders, competition would be unnecessarily restricted and borrowers could be deprived of lower prices. Some industry representatives voiced the fear that large lenders will make it difficult for non-lenders to develop any packages other than those the lenders themselves retail, by refusing to participate in other entities' packages.[33] On the other hand, lenders asserted that since settlement services are largely required to protect the lender's security, lenders should not have to accept unconditionally any other settlement service providers' settlement packages. In the HUD-Federal Reserve Report HUD recommended that any entity should be permitted to package as long as it can provide a Guaranteed Mortgage Package and a mortgage loan at a guaranteed interest rate.

Consumer advocates also supported packaging, but asserted that any packages must include a loan with an interest rate guarantee to be useful to borrowers. Although consumer advocacy groups believed that guaranteeing settlement costs has value, they noted that these costs are a small portion of the overall cost of a mortgage loan. Advocates said that unless borrowers also receive a firm commitment on the interest rate and any applicable points they cannot truly comparison shop. Without such a firm commitment, consumer advocates said some lenders may provide the borrower with a guaranteed settlement cost quote and then increase the interest rate to offset any savings offered to the borrower on the settlement costs. These lenders would then realize additional profits based on the mortgage's pricing. These advocates expressed the fear that unwary borrowers will be lured into particular loan products by inexpensive or below-market settlement cost packages and then find themselves in higher rate loans that more than offset any purported cost savings. The HUD-Federal Reserve Report at 22.

Lender representatives expressed varying views on guaranteeing rates as part of a specific package. Some lenders stated that underwriting is costly and time-intensive and that mortgage brokers and other retail originators cannot provide guaranteed rates that bind lenders early in the mortgage loan process. Other industry representatives asserted, however, that requiring lenders to provide guaranteed rates along with guaranteed settlement costs is viable. Many of today's mortgage originators provide firm rate information to shoppers early in the process based on nearly instantly available credit information, without any assurance that the borrower will go forward with the transaction and the originator will receive compensation.

Section 8 Exemption for Packaging

Lenders' representatives asserted at the time of the Report that an exemption from RESPA's Section 8 prohibitions is necessary for packaging to work. These representatives pointed out that Section 8 prohibits volume-based discounts between settlement service providers, since they fear such arrangements would be viewed as compensated referral arrangements in violation of the statute. Also, while Section 8 prohibits kickbacks, compensated referrals, and unearned fees, the statute provides no bright line on how to determine when a payment has been earned for goods or services (which is permissible under RESPA) or is compensation for a referral, or is an unearned fee (which are illegal and subject to criminal sanctions and civil action under Section 8). Moreover, RESPA prohibits requiring the use of an affiliated settlement service provider except in limited circumstances,[34] which can be an additional impediment to packaging services. Proponents of packaging further asserted that because of Section 8's prohibitions and questions about how they apply, lenders and others do not currently package. These proponents said that were an exemption granted and packaging of services prevalent, borrowers would benefit more from the resulting lower costs than they do from RESPA's current Section 8 prohibitions. The HUD-Federal Reserve Report at 30. Consumer groups generally also supported an exemption for packaging, as long as packagers are required to guarantee both settlement costs and interest rates.

Members of the settlement services industry other than large lenders, however, including small lenders and title companies, expressed strong concern about and, in some cases, outright opposition to an exemption from Section 8 to encourage packaging. They said that only lenders would offer packages and that the lenders would squeeze out savings from small providers and then retain these savings in the form of higher profits, without passing them on to borrowers. Small settlement service providers also said that the only way they could remain competitive would be by offering packages themselves, and they expressed serious concern about their ability to do so. They further asserted

[32] For example, a packager could contract to have XYZ Appraisal Company complete all its appraisals for a given period for $300 each rather than the $350 the company normally charges for a standard appraisal. The packager could rely on that discounted contract price in pricing the package of guaranteed costs to the borrower. With their own costs negotiated in advance, packagers could disclose the cost for the entire package early in the borrower's mortgage shopping process with certainty, and the borrower then could compare different vendors' packages.

[33] Nonlenders also suggested that to provide a level playing field, the services in the package should be itemized.

[34] Generally, under Section 8(c)(4) of RESPA an entity may refer business to an affiliate as long as the affiliate arrangement is disclosed, there is no required use, and the only return to the entity making the referral is a return on capital.

that borrowers do in fact already shop for settlement services, that prices for these services are currently competitive, and that lifting Section 8 restrictions will harm rather than help borrowers because any savings from packaging will not be passed on to borrowers and fewer providers will be available to compete. Id. at 22.

During the development of the HUD-Federal Reserve Report the agencies noted that technology is enabling the provision of earlier, firmer, settlement cost information. Id. at 39. Moreover, during the development of the Report, HUD became aware of promising proposals that were advanced by consumer advocates and some industry representatives where lenders, after obtaining credit reports, would provide borrowers guaranteed rate and point information.[35] This guarantee would be subject to appropriate conditions such as market changes in the cost of money (where the rate and points are not locked), and verification of the value of the collateral and the borrower's creditworthiness. HUD supported these and similar efforts because it regards the full costs of obtaining a loan—including settlement costs, interest rate, and points—as the information that is essential to assist borrowers in shopping for a mortgage loan.

HUD concluded that an exemption should be provided for packaging to facilitate earlier comparison shopping by borrowers, greater competition among mortgage lenders and others, and guaranteed prices to borrowers from the time the borrower applies for a mortgage through settlement. The Board recommended an exemption to improve the consumer's ability to shop effectively and to allow competition to reduce the cost of financing a home. To encourage packaging, HUD recommended that a Section 8 exemption should be made available to loan originators and others who: (1) Offer borrowers a comprehensive package of settlement services needed to close a loan; (2) provide borrowers with a simple prescribed disclosure that gives the guaranteed maximum price for the package of services through settlement; and (3) disclose the rate offered to the borrower for the loan, with a guarantee that the rate will not increase, subject to prescribed conditions.

The Report suggested that fees paid and arrangements within packages would be exempt from Section 8. Fees for referrals to or from the packager of settlement services to or from those outside the package would continue to be subject to Section 8. For example a real estate agent could not receive a fee for referring a borrower to a packager. Entities that do not meet the requirements of the exemption would be subject to Section 8. The HUD-Federal Reserve Report at 33.

A More Reliable GFE

As an alternative to packaging, both the Board and HUD also recommended making disclosures firmer under the current practice, by requiring a more reliable GFE, subject to tolerances. The HUD-Federal Reserve Report at 31.

The Report suggested that tolerances could be based on a percentage of the total estimated costs; if the actual costs at settlement exceeded the sum of the estimated costs and the amount of the tolerance, the loan originator would generally be held liable. Alternatively, the tolerance could apply only to certain categories of costs such as those within the loan originator's control. The Report said that charges imposed directly by the loan originator would have to be accurate. On the other hand, an increase in costs resulting from a borrower's choice would not count against the loan originator in determining whether the total costs exceeded the tolerance. The HUD-Federal Reserve Report at 31.

The HUD-Treasury Report

Early in 2000, HUD, in cooperation with the Department of the Treasury, reviewed the problem of predatory mortgage lending. Following five hearings in New York, Chicago, Atlanta, Los Angeles and Baltimore, in June, HUD and the Treasury issued a major report on the subject of predatory mortgage lending. The Report, entitled ''Curbing Predatory Home Mortgage Lending'' (HUD-Treasury Report), detailed predatory or abusive lending practices in connection with higher cost loans in the mortgage market. In addition, among numerous recommendations to address predatory lending, the Report reiterated support for RESPA/TILA reform along the lines recommended in the HUD-Federal Reserve Report.

The HUD-Treasury Report stated: ''that borrowers need firm information early in the loan process so that they can compare the products of one settlement service provider with another. If borrowers receive firm information but it comes too late in the loan process, they will not have the opportunity to shop. Moreover, if the information is available but the borrower must pay a significant fee to obtain it, borrowers may be disinclined to seek comparable information from multiple sources. *See* HUD-Treasury Report, 2000 at 66.

The HUD-Treasury Report pointed out that unscrupulous mortgage brokers ''may receive compensation as a result of inflated upfront charges paid by borrowers and indirect fees paid by lenders * * *. Brokers and lenders may also structure charges so that they are less transparent to the borrower, through the use of mechanisms such as yield spread premiums, which may disguise the true cost of credit.'' HUD-Treasury Report, 2000, at 80.

III. This Proposed Rule

With the above background in mind, today's rule proposes a new framework for borrower disclosures under RESPA that would:

1. Address the issue of mortgage broker compensation, specifically the problem of lender payments to mortgage brokers, by fundamentally changing the way in which such lender payments in brokered mortgage transactions are recorded and reported to borrowers;

2. Significantly improve HUD's Good Faith Estimate (GFE) settlement cost disclosure, and amend HUD's related RESPA regulations, to make the GFE firmer and more usable, to facilitate shopping for mortgages, and to avoid unexpected charges to borrowers at settlement; and

3. Remove regulatory barriers to allow guaranteed packages of settlement services and mortgages to be made available to borrowers, to make borrower shopping for mortgages easier and further reduce settlement costs. A description of each of these aspects of the rule follows.

A. Addressing Mortgage Broker Compensation and Lender Payments to Brokers

The proposed rule would fundamentally change the way in which information on the mortgage broker's functions and charges are reported in the Good Faith Estimate as described below.

1. Describing the Loan Originator's Function

Under this proposed rule, the new GFE at Section I would require that mortgage brokers and all other loan originators describe their services. The proposed form does not ask that only brokers provide this description because the description of other originators' services is equally useful to borrowers. The GFE would advise that the loan originator performs origination services by arranging funding from one or more

[35] At the time of the Report some consumer and industry groups discussed the possibility that borrowers could pay credit repositories the costs of and arrange the provision of credit information to lenders to expedite the process and to avoid significant fees.

sources for the borrower. It also advises that the originator does not shop for nor offer loans from all mortgage funding sources and the originator cannot guarantee the lowest price or best terms available in the market. The GFE makes clear that the borrower should compare the prices on the form and shop for the loan originator, mortgage product, and settlement services that best meet the borrower's needs.

The rule would require that this information be provided on the GFE to effectuate the GFE's purpose of providing borrowers with settlement cost information and avoiding confusion particularly with respect to the role of mortgage brokers. This language seeks to disabuse borrowers of the notion that brokers or other loan originators are their agents, and therefore are automatically shopping for them, a notion that can prevent their own shopping. This new provision will be coupled with increased education through the Settlement Cost Booklet and other means to help borrowers.

2. Explaining to the Borrower the Option of Paying Settlement Costs through the Use of Lender Payments Based on Higher Interest Rate

The new GFE, at Section IV, would clearly show borrowers the effect of alternative interest rates and their effect on monthly payments and cash needed for settlement. The GFE would inform borrowers that they have the options to pay settlement costs: (1) Through cash payments at settlement, (2) by borrowing additional funds to pay settlement costs, (3) by paying settlement costs through a higher interest rate and higher monthly payment, or (4) by lowering the interest rate and monthly payment by paying discount points. These options are available in loans from originators other than brokers. The Department in both the 1999 and 2001 Policy Statements on Mortgage Broker Fees especially called for the provision of this information to borrowers by brokers in brokered loans.

The provision of this information on the form will help borrowers understand their options for paying settlement costs and decide whether to use any lender payments to the borrower, discussed in (4) below, to help defray some costs or all of their settlement costs, including but not limited to the mortgage broker's charges.

3. Disclosing the Loan Originators' Charges—Including the Mortgage Broker's and Lender's Total Charges to Borrowers

HUD's current rules require that the broker's direct charges be disclosed on the GFE while all indirect payments including yield spread premiums are disclosed separately as ''Paid Outside of Closing'' (P.O.C.).[36] The existing disclosure requirements and instructions do not make clear to the borrower the broker's total charges so that the borrower can focus on them, shop among brokers, or negotiate these total costs with the broker. Instead, because of the way indirect broker compensation is currently disclosed, many borrowers conclude incorrectly that such indirect payments have no effect on their loan costs.[37]

Section III A of the GFE, as proposed, would disclose to the borrower as a consolidated figure the total origination charges of the mortgage broker and the lender. (The zero tolerance applies to the total origination charges of the mortgage broker and the lender rather than any split between them.) Additionally, on Attachment A–1 there would be a breakdown of the origination charges into the total charges, respectively, of the broker and of the lender. This approach of providing total origination charges initially is taken to assist borrowers in comparing total origination charges of brokered loans to loans originated by lenders. At the same time, it ensures that the borrower knows the broker's and lender's charges. For mortgage brokers, these charges shall include all charges from the borrower that are paid to the mortgage broker for the transaction. For lenders, these charges shall include all or any portion of direct charges from the borrower that the lender receives for the transaction, other than discount points reported in line III B (2). Under the secondary market exemption, any additional fees realized by a lender from a bona fide transfer of a loan is not required to be disclosed under HUD's RESPA regulations. See 24 CFR 3500.5 (b)(7).

4. Requiring That in Brokered Transactions Lender Payments to the Borrower and Borrower Payments to the Lender Be More Appropriately Reported

A major provision of this rule is the requirement that in all loans originated by mortgage brokers, any payments from a lender based on a borrower's transaction, other than a payment to the broker for the par value of the loan, including payments based upon an above par interest rate on the loan (including payments formerly denominated as yield spread premium), be reported on the GFE (and the HUD–1/1A Settlement Statement) as a lender payment to the borrower. Additionally, the rule would require that any borrower payments to reduce the interest rate (discount points) in brokered loans must equal the discount points paid to the lender, and be reported as such on the GFE (and HUD–1/1A) as a borrower payment to the lender. These changes would require mortgage brokers to disclose the maximum amount of compensation they could receive from a transaction, by including the amount in the ''origination charges'' block of the GFE, and indicating the amount of the lender payment to borrower that would be received at the interest rate quoted, if any. Mortgage brokers would be unable to increase their compensation without the borrower's knowledge, by placing the borrower in an above par loan and receiving a payment from the lender (yield spread premiums), or by retaining any part of any borrower payment intended to reduce the loan rate (discount points).

Through these changes in reporting requirements, HUD believes that virtually all disputes regarding broker compensation in table-funded transactions and intermediary transactions involving yield spread premiums will be resolved. All mortgage broker compensation will be reported as direct compensation in the origination block of the GFE, maximum broker compensation will be clear and brokers will have no incentive to seek out lenders paying the largest yield spread. They will, instead, be motivated to find the best loan product they can for the borrower.

In requiring this methodology for reporting lender payments and discount points, it is important to note what the Department has not done. HUD has not taken away from borrowers the ability to select a higher rate loan in order to pay settlement costs (including, where the

[36] HUD's existing RESPA regulations do not provide explicit guidance on where to place a yield spread premium on the GFE, nor is there any express reference to such indirect payments on the GFE format. The regulations do suggest generally, however, that Appendix A Instructions for the HUD–1 should be followed in completing the GFE. See 24 CFR 3500.7(c)(1). As described above, these Instructions state that a mortgage broker's fee is to be disclosed on one of the blank lines in the 800 series. A corresponding line appears on HUD's current suggested GFE format (Appendix C to Regulation X) for listing such fees. HUD's instructions, however, do not require that the amount to be reported in the 800 series for mortgage broker fees must include yield spread premiums. To the contrary, HUD's Appendix A Instructions advise that yield spread premiums and other lender payments to mortgage brokers should be disclosed on the HUD–1 as payments by the lender to the broker that are ''paid outside of closing'' (''P.O.C.''), and expressly state that such amounts should not be shown in the borrower's column. 24 CFR part 3500, Appendix A.

[37] HUD's Settlement Cost Booklet is also not helpful. It suggests, incorrectly, that yield spread premiums are not costs to the borrower. It will be revised.

borrower so chooses, broker compensation), or to pay additional sums at settlement in order to lower their interest rate and monthly payments. HUD has long recognized that these financing tools provide flexibility and have value to borrowers in specific circumstances. The Department emphasized this point most recently in Statement of Policy 2001–1. HUD's proposed rule, therefore, preserves these options, but seeks to the maximum extent possible within the Department's statutory and regulatory framework, to eliminate the possibility of abuse in the application of these financing tools, by ensuring that the full value of selecting either option is known and redounds to the borrower.

The Department acknowledges that the proposed rule results in different treatment of compensation in loans originated by lenders and those originated by mortgage brokers. This is not because the Department believes that the latter are necessarily more suspect or susceptible of abuse than the former. It results simply from the fact that the reporting of total lender compensation cannot be meaningfully regulated under RESPA, while total broker compensation can be regulated. This is so for both legal and practical reasons; first, as indicated above, lenders enjoy a secondary market exemption from RESPA Section 8 scrutiny, meaning that under HUD's regulations any compensation derived from the sale of a loan in the secondary market by a lender is outside RESPA's purview. Second, were there no such exemption, measuring indirect lender compensation (compensation derived from the loan rate) would be very difficult. A lender may retain the loan in its portfolio for the life of the loan, or sell it long after the settlement. Payments from lenders to borrowers in brokered loans, however, based on the lenders' rate sheets or otherwise, as well as discount points paid to lenders, are capable of quantification down to the last penny.

Currently, as indicated in the background, the GFE requires disclosure of the lender payment to the borrower (formerly the ''yield spread premium'') as a charge that is ''POC'' or ''paid outside of closing,'' which has been a cause of confusion for borrowers. The form as proposed would now require that the lender payment be disclosed immediately after the origination charges. HUD believes that this new location for the disclosure of the lender payment will cure any confusion and clearly tell borrowers how much their mortgage broker is earning from the transaction. Furthermore in order to avoid borrower confusion about the mortgage brokers' charges as compared to other loan originators' charges and the impact of a lender payment, the proposed rule would require that immediately following disclosure of the lender payment the form will show the net loan origination charge due from the borrower. It is this number that HUD intends the borrower to focus on and HUD seeks to achieve this by highlighting that total on the form, so that the borrower understands that the payment is applied as a credit to reduce the borrower's total origination charges. HUD believes that this approach ensures clearer disclosure of all relevant broker fees and lender payments while avoiding disadvantaging brokers. With the understanding provided by the form the borrower can compare his or her net origination charges loan-to-loan, originator-to-originator.

B. Significantly Improved Good Faith Estimate (GFE)

As described in the Background, under RESPA and its implementing regulations, loan originators must provide the GFE either by delivering the GFE or by placing it in the mail to the loan applicant, not later than 3 business days after an application is received or prepared.[38] Frequently, a GFE is provided only after the borrower pays a significant fee or fees. The current suggested GFE calls for a listing of charges that may itself lead to a proliferation of charges. Moreover, there are few standards for loan originators to follow in calculating estimated costs, which allows the GFE to be unreliable.[39] For these reasons, the GFE is generally not a useful shopping tool to compare the charges of loan originators, other settlement service providers, or loan products. The GFE, and its attendant rules, also do not effectively prevent surprise costs at settlement.

Today's rule would make the GFE firmer and more usable, to facilitate borrower shopping for mortgages by making the mortgage transaction more transparent, and to prevent unexpected charges to the borrower at settlement. In order to improve the GFE HUD has concluded that establishment of a new required GFE format is necessary.

The rule therefore would establish a new, more informative, required GFE format to be provided to borrowers by loan originators in all RESPA covered transactions and new requirements for its provision. HUD believes that the content of the material in these proposed forms gives the consumer the information needed to shop for loan products and to assist them during the settlement process. HUD recognizes that in order for these forms to be useful shopping tools, they must be consumer friendly. The Department seeks public comment on these forms. In addition, the Department will arrange focus groups during the comment period to elicit comments on how to make the material in the new proposed forms as consumer friendly as possible, including considering how the new proposed forms are best compared by consumers to the HUD–1 and what revisions, if any, to the HUD–1 would be most helpful.

1. The New GFE

The proposed format for the new GFE and Instructions for completing it appear as Appendix C to this rule. The proposed form is intended for use in all federally related mortgage transactions. In addition to the changes to the GFE described in A above, the new required GFE format would:

a. Provide the Interest Rate and Costs for the Loan the Borrower Seeks

The current requirements for the GFE do not require the inclusion of an interest rate. Nonetheless, borrowers shop for mortgages based on the interest rate as well as settlement costs, and the inclusion of this information would be useful to borrowers. Accordingly, the new GFE, in Section II, would list the note rate, Annual Percentage Rate (APR), and loan amount for the loan that the GFE is based on. Any mortgage insurance premium included in the APR would be separately disclosed in Section II. Section V would contain information on interest rates and adjustments to adjustable rate mortgages and applicable prepayment penalties and balloon payments. In Section III, the GFE would include a disclaimer indicating that unless the borrower locks at this time, the interest rate may change.

b. Simplify and Consolidate Major Categories on the GFE

As detailed in the Background section, under current RESPA rules, the GFE simply lists estimated charges or ranges of charges for settlement services. There is no requirement for grouping or subtotaling charges to the same recipients. The costs listed on the GFE include loan originator/lender-retained charges, such as loan origination and underwriting charges; charges by third parties for lender required services, such as appraisal, title and title

[38] The rule indicates that the GFE must be given within 3 days of the time an application is received or prepared to accommodate those instances where originators prepare applications for borrowers.

[39] See note 13, infra.

insurance fees; state and local charges imposed at settlement, such as recording fees or city/county stamps; and amounts the borrower is required to put into an escrow account, or reserves, for items such as property taxes or hazard insurance. At settlement, borrowers receive a second RESPA disclosure—the Uniform Settlement Statement (the HUD–1/1A)—that enumerates the final costs associated with both the loan and, if applicable, the purchase transaction.

As proposed, the revised GFE, in Section III, would group and consolidate all fees and charges into major settlement cost categories, with a single total amount estimated for each category. This approach would reduce any incentive for loan originators and others to establish a myriad of ''junk fees'' and provide them in a long list, in order to increase their profits. Loan originators would be required to include all fees they receive in their total, including all points and origination charges. The interest rate dependent payment would include all fees formerly to the mortgage broker from the lender as well as any such fees in the future.

In addition to the loan originator charges and the interest rate dependent payment, the major cost categories on the revised GFE would be: (1) Lender required and selected third party services; (2) title charges and title insurance premiums; (3) shoppable lender required third party services; (4) state and local government charges; (5) escrow/reserves (for taxes and insurance); (6) hazard insurance; (7) per diem interest; and (8) optional owner's title insurance. The proposed form then would include a final total of all settlement charges so the borrower can focus on the total costs to properly compare offers.

c. Identifies Shoppable and Required Services

The GFE in Section III E, would aid shopping after application by requiring loan originators to separately identify those third party settlement services that are loan originator selected and required and those that the borrower may shop for independently.[40] This provision will enable borrowers to shop for major services to the extent possible, even after the borrower has selected a loan originator. As described above, HUD's current rules at 24 CFR 3500.7(e) requires lenders to list on the GFE the particular providers of settlement services that they require their customers to use.[41] Attachment A–1 to the proposed form will list those ''Required Use'' providers while also identifying the services that are required, but which borrowers can shop for providers on their own. Additionally, the rule proposes to ease the ''Required Use'' disclosure requirement, by only requiring the loan originator to state the service, the name of the provider, and the cost estimate. The Department proposes to forego the requirement that this listing also include the lender's relationship to the required provider.

Attachment A–1 will, as noted, also include the breakdown of the origination charges into lender and broker charges so that borrowers can better understand the respective lender and broker charges, and where possible even negotiate lower costs. In a similar vein, Attachment A–1 also breaks out title agent services and title insurance into separate subtotals for the actual title insurance versus compensation to the title agent. Title agents routinely receive direct payments from borrowers for their services as well as commissions from the insurance premium for the sale of insurance. The title agent subtotal will add up these costs so that the borrower can compare, and possibly negotiate, these charges.

2. New GFE Requirements

To improve the existing disclosure scheme, this proposed rule would amend Regulation X to establish new rules for the GFE including the following:

a. Clarifying the Application Requirements

Under the proposed rule, the GFE would be delivered or mailed at or within 3 days of application. The proposed rule, however, would only require a borrower to provide basic credit information and a property address in verbal, written or computerized form, but before the payment of any significant fee to the loan originator in order to receive a GFE. The GFE would be conditioned on the borrower's credit approval following final underwriting and appraisal of the property to be secured by the mortgage.

To carry out this approach, the rule proposes to first clarify the definition of the term application, in HUD's RESPA rules at 24 CFR 3500.2(b). The new definition of application would make clear, in accordance with informal HUD advice, that an application is deemed to exist whenever a prospective borrower provides a loan originator sufficient information (typically a social security number, a property address, basic employment information, the borrower's information on the house price or a best estimate on the value of the property, and the mortgage loan needed), whether verbally, in writing or computer generated, to enable the loan originator to make a preliminary credit decision concerning the borrower so that the originator can provide a GFE. See HUD Old Informal Opinion (March 27, 1980) and HUD Old Informal Opinion (October 15, 1982). HUD proposes this new definition to facilitate the provision of GFEs in response to virtually any type of request for a GFE, in order to give the borrower the necessary information for shopping. Under current rules, an application is the ''submission of a borrower's financial information, in anticipation of a credit decision whether written or computer generated relating to a federally related loan'' identifying a specific property. The proposed rule would explicitly broaden the definition to cover verbal and other requests as long as these requests contain sufficient information for the originator to provide a GFE. HUD also will consider comments on whether it should provide a brief form for the application.

Under RESPA, a ''Good Faith Estimate'' is to be provided with a settlement cost booklet by a lender to each person ''from whom it receives or for whom it prepares a written application.'' 12 U.S.C. 2604(d). Because an originator begins the process of preparing an application on behalf of the borrower when the borrower submits application information, the borrower's information itself need not be provided in writing.

RESPA's time limits for delivery of the GFE would run from the point that an originator receives ''an application.'' While the statute allows the loan originator to mail or deliver the GFE 3 days after application, it is likely that the originator will provide the GFE as quickly after the borrower's request as possible.[42] HUD recognizes that the proposed rule's change of the definition of application, and the requirement that

[40] Lender required, lender selected third party services are to include items such as flood certification services and mortgage insurance, to the extent an upfront premium is charged.

[41] HUD's RESPA regulations contain certain restrictions on Affiliated Business Arrangements. See 24 CFR 3500.15. Section 9 of RESPA also prohibits sellers of property from requiring, directly or indirectly, the buyer to purchase title insurance from any particular title company.

[42] As indicated in the background section, supra, during the development of the HUD/Fed Report, HUD became aware of proposals where borrowers would arrange and pay for credit reports to loan originators of their selection. HUD supports these efforts as a way to lessen the burden on the originator's customers of paying the costs of those who are shopping.

GFE be provided to prospective borrowers early in the shopping process, frequently before they select a loan originator, may have implications for the content and delivery of required disclosures under the Truth in Lending Act (TILA). Question 28 specifically seeks comments on how HUD's proposed GFE changes impact other federal disclosure requirements, and invites suggestions on ways to consolidate or coordinate existing statutory disclosure requirements.

The rule proposes that GFE estimates would be valid for a minimum of 30 days from when the document is delivered or mailed to the borrower. This is proposed in light of the tolerances to avoid committing originators indefinitely. Within the 30 days the borrower must agree to go forward and pay any additional money required to complete the underwriting process. If the borrower fails to accept the offer within 30 days, the borrower would need to return to the loan originator to request the originator to provide a new GFE or ratify the previous one. Commenters are asked in Question 5 below whether this is an appropriate time period for the GFE.

b. Facilitating Shopping With the GFE

As stated above, to achieve the purposes of the Act, the proposed rule would limit fees paid by the borrower for the GFE, if any, to the amounts necessary for the originator to provide the GFE itself. The fee could not include amounts to defray later appraisal or underwriting costs. This approach would both facilitate shopping and reduce the possibility that fees for the GFE are unearned, in violation of RESPA's proscription against such fees. While HUD recognizes that there may be costs attendant to obtaining credit information from third parties and evaluating that information manually and/or electronically, the provision of the GFE does not today, and would not in the future, necessitate full underwriting and appraisal. These steps come afterwards, and under the approach in this proposal, GFEs explicitly would be given subject to underwriting and appraisal. Therefore, any charge at the time of application should be limited only to those costs that result directly from providing the GFE. This is not to say that all loan originators would be expected to charge for GFEs. HUD would prefer that originators not impose any charge for a GFE, since providing a GFE before the payment of any fee will further facilitate shopping. HUD believes it would be reasonable for loan originators to treat shoppers for mortgages in much the same way other retailers treat shoppers, where the price of the product includes marketing expenses and purchasers pay the costs incurred to serve shoppers who do not purchase the goods or services. Such an approach would better serve the purposes of the statute.

c. Providing an Accurate GFE

As described in the background section, Regulation X currently defines ''Good faith estimate'' as ''an estimate, prepared in accordance with Section 5 of RESPA, of charges that a borrower is likely to incur in connection with a settlement.'' Pursuant to 24 CFR 3500.7(c) of Regulation X, loan originators are required to state on the GFE the dollar amount or range of charges that the borrower will normally pay at or before settlement based upon common practice in the locality of the mortgaged property. While the rules require that the estimate be made in ''good faith'' and ''bear a reasonable relationship'' to the charges the borrower is likely to incur at settlement, there is no further explication of what a ''Good Faith Estimate'' demands, either with respect to the loan originator's own charges/compensation, or with regard to lender required third party charges and other settlement costs.

Three decades of experience has shown that too often the estimates appearing on GFEs are significantly lower than the amount ultimately charged at settlement, are not made in good faith (*e.g.*, a range of $0–$10,000), and do not provide meaningful guidance on the costs borrowers ultimately will face at settlement. The Department recognizes that, occasionally, unforeseeable circumstances can and do drive up costs in particular transactions. HUD believes, however, that in most cases loan originators have the ability to estimate final settlement costs with great accuracy. The loan originator's own fee/compensation, which is entirely within the originator's control, can be stated with certainty, absent unforeseeable and extraordinary circumstances. Moreover, most third party costs such as appraisal charges, pest inspection fees, and tax/flood reviews, are fixed, and others, such as upfront mortgage insurance premiums, and title services and insurance, typically only vary depending on the value of the property or the loan amount. State and local recording charges, stamps, taxes are also generally well known to loan originators or, where necessary, can readily be calculated based on the loan amount or estimated precisely, on a pro rata basis, based on a projected settlement date.

HUD also believes that recent advances in technology and telecommunications in loan processing make the routine provision of accurate estimates of third party costs both easier and cheaper.

Notwithstanding, the GFE has too often failed to represent an accurate estimate of final settlement costs for a number of reasons. The absence of more precise regulatory standards for measuring accuracy has not helped ensure greater accuracy and reliability. Beyond that, some originators appear to purposely underestimate settlement costs as a means of inducing prospective borrowers to use their services, or as a way to obfuscate the amounts they plan to receive later in the final mortgage transaction. In too many cases, charges that never appeared on the GFE materialize at settlement. Such ''junk fees'' typically result in additional compensation for the originator and/or third party settlement service providers.

In light of these considerations, HUD believes that in order for the GFE to serve its intended purpose, which is to apprise prospective borrowers of the charges they are likely to incur at settlement, new standards must be established under existing law to better define ''good faith'' and the standards applicable to the GFE.[43] Accordingly, the proposed rule would make a number of specific changes to GFE requirements.

First, the rule would prohibit loan originators from exceeding the charges stated on the GFE for their own services, lender required and lender selected third party services, and government charges at settlement absent ''unforeseeable and extraordinary circumstances'' beyond the loan originator's control such as acts of God, war, disaster, or any other emergency, making it impossible or impractical to perform.

Second, the rule would establish an upper limit, or 10% ''tolerance,'' so that actual charges at settlement for shoppable lender required third party services, borrower selected title services and insurance, and reserves/escrow, cannot vary by more than 10% of the estimates of those fees and charges

[43] Differing editions of Black's Law Dictionary have defined ''good faith'' as ''a state of mind consisting in * * * honesty in belief or purpose * * * [and faithfulness to one's duty or obligation,'' and ''freedom from knowledge of circumstances which ought to put the holder upon inquiry'' as well as ''absence of all information, notice, or benefit or belief of facts which render [a transaction unconscientious.'' Inherent in these definitions is the concept that where a party makes an estimate in good faith they will take into account all relevant information available to them, and will exercise reasonable care in ascertaining and evaluating such information before providing such an estimate.

stated on the GFE absent unforeseeable and extraordinary circumstances. The 10% tolerance applies to all lender selected third party services, and to third party services from providers who have been suggested to the borrower by the loan originator. It does not apply to third party services from providers selected by the borrower independently of the originator's recommendation.

The inclusion of these tolerances will assure that borrowers can either find prices within the estimates in the marketplace or return to the lender who will identify sources that will honor those prices. However, if the borrower chooses to purchase a more expensive service than is available or than the lender can provide, the lender will not be held to have exceeded the tolerance. The 10% level for tolerances has been selected to inject discipline into estimates while providing a margin for legitimate error based on market changes. Commenters are asked to provide their views on whether this is or is not the appropriate tolerance level, tolerance, and why.

Third, the rule would include redisclosure requirements triggered by changed circumstances. Specifically, if, after full underwriting, a loan originator selected by a borrower to obtain a mortgage loan determines that the prospective borrower does not qualify for the loan product identified in a previously provided GFE, the loan originator shall inform the borrower that the loan originator does not offer loan products meeting the borrower's needs or credit status. Alternatively if the loan originator does offer other products meeting the borrower's circumstances, the loan originator must so inform the borrower and the borrower may request a new GFE. Furthermore, when, after receiving a GFE, a borrower selects a loan originator to obtain a mortgage loan and qualifies for the loan product identified, but elects not to lock-in the interest rate and the interest rate dependent payment quoted on the GFE, the loan originator shall provide the borrower with an amended GFE at such time as the borrower does lock the rate and the interest rate dependent payment if either has changed from that quoted on the original GFE. The amended GFE shall identify those cost categories that have changed as a result of the change in the interest rate. In no case may an amended GFE include increases in cost categories which are not dependent on the interest rate (Section III. B.).

By limiting the extent to which final settlement charges can exceed GFE estimates, the Department intends to render the GFE a much firmer, more reliable, and meaningful disclosure for borrowers. If the cost at settlement exceeds the amount reported on the Good Faith Estimate, absent unforeseeable and extraordinary circumstances, the borrower may withdraw the application and receive a full refund of all loan-related fees. Such circumstances would have to be documented in writing by the loan originator and such documentation retained by the loan originator. These circumstances may be further defined in HUD's final regulations, and comments are requested in response to Question 2 below on both the definition of unforeseeable and extraordinary circumstances, and borrower rights where there is noncompliance with GFE requirements. Concurrent with finalization of this rule, HUD also will establish procedures for closely scrutinizing loan originators that fail to meet these new GFE requirements for possible Section 8 violations.

d. Negotiating Discounts From Third Party Settlement Service Providers

The establishment of tolerances under the proposal will require that loan originators actively follow the market prices for settlement services in their communities. HUD recognizes that the new GFE's tighter requirements on estimated third party charges may cause many loan originators not already doing so to seek to establish pricing arrangements with specific third party settlement service providers in advance, in order both to ensure they are able to meet the tolerances and to ensure lower prices for their customers. As part of negotiations for such arrangements, many originators, particularly those with a substantial volume of business, may seek prices from third party providers that are lower than those providers offer on a retail basis. However, because Section 8 of RESPA broadly prohibits providing a ''thing of value,'' which is specifically defined to include discounts, in exchange for the referral of business, many loan originators have been reluctant to openly seek such pricing benefits, even where any such discount in the price is passed on to the borrower. HUD believes that the fundamental purpose of RESPA is to lower settlement costs to borrowers, and it is therefore contrary to the law's objectives to interpret the anti-referral fee provisions of Section 8 to prohibit one settlement service provider from using its market power to negotiate discounted prices, as long as the entire discounted price negotiated by the originator is charged to the borrower and reported as part of the total charge within Sections III(C) through (J) as appropriate. The proposed rule amends Regulation X to make this clear. HUD also solicits comments on this issue in Question 4 below.

e. Revising the HUD–1/1A and Appendix A Instructions

Consistent with the proposed rule's new approach to the reporting of lender payments to borrowers, the proposal would require that on the HUD–1 all such payments be reflected in the borrower's column, in the applicable series (e.g., 800 series for payments to mortgage brokers; 1300 series for payments to other third party settlement service providers). However, inasmuch as there is no place for identifying and reporting credits on the HUD–1 A, in any transaction where there is such payment, the rule requires that the HUD–1 must be used. The proposed rule's revisions to the Appendix A instructions for the HUD–1 appear immediately following the proposed amendments to Regulation X.

Also, the proposed new GFE, while reducing the number of cost items reported on the face page, and consolidating the presentation to the borrower of important cost information, is not readily comparable to either the HUD–1 or HUD–1A form, which the borrower will receive at settlement. This is because certain cost items on the GFE are currently reported in numbered sections of the HUD1/1A forms not corresponding to their GFE counterparts. Thus, for example, while the proposed GFE clearly distinguishes between those settlement costs attributable to the loan originator(s) (section A. on the new GFE) and other lender required third party settlement services (sections C. and E. on the new GFE), the HUD–1/1A forms combine loan originator costs and some third party costs under the same heading (''Items Payable in Connection with the Loan'') and numbered section (800). The HUD1/1–A forms include credit report fees, appraisal fees, mortgage insurance application fees, and inspection fees in this category. Other third party services, such as pest inspection fees, permit fee, and surveys are separately reported on the HUD–1/1A (1300). In addition, the new GFE identifies as separate major cost categories some items reported, in whole or in part, under the same heading on the HUD–1/1A. For example, the new GFE lists hazard insurance and per diem interest as separate categories. However, on the HUD–1/1A, where hazard insurance premiums are paid in advance they are reported, along with other items such as per diem interest and pre-paid mortgage insurance premiums, in section 900, ''Items Required by Lender to be Paid in

Advance.'' Moreover, where a portion of the hazard insurance premium is required to be escrowed, that amount is reported on the HUD–1/1A in section 1000, along with other escrow items, as ''Reserves Deposited With Lender.''

As proposed, the new GFE would consolidate certain charges into lump sum categories (e.g. lender required third party services). The Department has made only minor changes to the HUD–1 instructions, to assist the borrower in comparing the new GFE to the HUD–1. The Department took this approach because the HUD–1 is well accepted as a listing of settlement service charges by industry and consumers alike and HUD is reluctant to change the form unnecessarily. However, there is a risk that if the forms are not clearly comparable, lenders could deviate from the prices given in the GFE or GMPA and the borrower would not realize the deviations. Modifications could be made to the HUD–1 so that the fee categories on the new GFE would correspond to similar groupings on the HUD–1 and the two documents could be more easily compared. HUD invites comments in Question 9 below on whether or not the HUD–1 should be modified. HUD plans to use focus groups to ensure that the proposed forms are consumer friendly including considering, among other things, how the new proposed forms are best compared by consumers to the HUD–1 and what revisions, if any, to the HUD–1 would be most helpful.

For purposes of TILA, the packager must list the finance charges needed to calculate the APR on an addendum to the HUD–1 or HUD–1A and HUD invites comments in Question 20 on this issue. The proposed rule seeks comment on whether there should be further modifications to the HUD–1/1A forms so that they more accurately correspond to the new GFE. However, the Department believes that, in the absence of further changes to the HUD–1/1A forms, borrowers can be assisted in comparing the two disclosures, and, to that end, the new GFE identifies, next to each GFE category, where on the current HUD–1/1A the corresponding cost information is to be found. As the preceding discussion makes clear, this necessitates identifying more than one HUD–1/1A section number next to some GFE categories.[44]

[44] Specifically, the new GFE contains the following cross-references to the HUD–1/1A for each GFE category: A. Origination Fees, 800; C. Lender Required/SelectedThird Party Services, 800, 900, 1000, 1300; D. Title Services/Insurance, 1100; E. Lender Required/Shoppable Third Party Services, 800, 900, 1000, 1300; F. Government Charges—Taxes, 1000, 1200; G. Reserves/Escrow, 1000; H. Per Diem Interest, 900; I. Hazard Insurance, 900, 1000; J. Optional Owner's Title, 1100.

3. Section 6 Transfer of Servicing Language

In 1990, Congress amended RESPA to include a disclosure, which informs borrowers that their loan or the servicing of their loan, may be sold. 12 U.S.C. 2605, Public Law 93–533 section 6 (November 28, 1990). In 1997, HUD proposed a rule to implement the amended statute. Many comments were received and the rule was never finalized. 62 FR 25740. The Department plans to finalize the 1997 proposed rule shortly. However, in the meantime, the Section 6 language in the statute may be provided in conjunction with the GFE instead of the language currently indicated in § 3500.21 and Appendix MS–1.

C. Remove Regulatory Barriers To Allow Guaranteed Packages of Settlement Services and Mortgages To Be Made Available to Borrowers

1. A New Safe Harbor for Guaranteed Mortgage Packages (GMP) Created Through HUD's Exemption Authority

Consistent with its earlier recommendations in the HUD-Federal Reserve Report, described in the background section of this rule, the Department believes that the most effective means of simplifying the process of obtaining a mortgage, promoting competition to lower costs and facilitating shopping is to offer borrowers Guaranteed Mortgage Packages containing a lump sum price for all loan originator and governmental required settlement costs associated with obtaining a mortgage combined with an interest rate guarantee for the loan. The Department believes that such packages offer borrowers the possibility of lower prices through innovation by packagers, the pricing discipline involved in arranging packages, and competition among packagers.

Under a Guaranteed Mortgage Package approach packagers would offer a lump-sum price for settlement costs, and an interest rate guarantee at no cost to the borrower until the borrower selects the package. The packager would be held to those figures from the time the package is agreed to through settlement. This approach would allow the borrower to rely on the quoted price and rate and to compare fewer numbers in shopping for the best loan to meet his or her needs. Even with improvements to the current disclosure scheme, including more reliable quotes for major settlement costs under the new GFE (see B(2)(c), above), it will not be as easy for borrowers to shop and compare as it would be if they could simply comparison shop for mortgages based on a few prices as under this proposal.

The Secretary has determined, therefore, that effective packaging of settlement services will depend on packagers negotiating lower costs with third party settlement service providers, and then providing borrowers with an alternative disclosure, the Guaranteed Mortgage Package Agreement (GMPA). This proposal will increase the opportunities for borrowers to shop among packages fostering competition to lower costs further. Under Section 8(c)(5) of the Act, the Secretary is authorized to issue regulations that remove certain payments or classes of payments or other transfers from the Section 8 prohibitions on kickbacks and unearned fees after consultation with designated regulatory agencies. Also, under Section 19 (a) of the Act, the Secretary is authorized to grant reasonable exemptions for classes of transactions as may be necessary to achieve the purposes of the Act. Accordingly, under these authorities, HUD is proposing to establish a carefully circumscribed safe harbor from RESPA's provisions at Section 8 to facilitate the development and marketing of Guaranteed Mortgage Packages.

2. Who May Package

The purpose of the Guaranteed Mortgage Package safe harbor is to stimulate competition and improve the borrower's ability to shop. Under this proposal, entities other than lenders may qualify as packagers for a safe harbor, as long as their packages include a mortgage and otherwise satisfy the requirements of the safe harbor. In this connection, in order to ensure that the borrower receives the settlement package of services and the mortgage loan, the proposed rule would require that the packager sign the GMPA agreeing to provide the Guaranteed Mortgage Package at the Guaranteed Mortgage Package price and that non-lender packagers have a lender sign the GMPA after borrower acceptance agreeing to provide the loan included in the Guaranteed Mortgage Package.

3. Requirements for the Safe Harbor

Packagers that provide the GMP and abide by its terms and the other requirements of this rule, along with any settlement service providers participating in such a package, would receive a safe harbor from scrutiny under Section 8 of RESPA as described below. Specifically, to qualify for the

safe harbor, packagers, within 3 days of borrower's application, would have to offer, without an upfront fee: (1) A guaranteed price for the loan origination and virtually all other lender required settlement services needed to close the mortgage, including without limitation, all application, origination, underwriting, appraisal, pest inspection, flood and tax review, title services and insurance, and any other lender required services, and governmental charges; (2) a mortgage loan with an interest rate guarantee, subject to change (prior to borrower lock-in) resulting only from a change in an observable and verifiable index or based on other appropriate data or means to ensure the guarantee; [45] and (3) a Guaranteed Mortgage Package Agreement (GMPA) as a prospective contract with the borrower that is binding through settlement containing the maximum settlement costs. The GMP offer would remain open as an offer for a minimum of 30 days from when the document is delivered or mailed to the borrower. The GMPA becomes a binding contractual commitment immediately upon borrower acceptance of the package and payment of a minimal engagement fee, subject only to acceptable final underwriting and property appraisal.

The guaranteed package also would include up-front costs of mortgage insurance. The cost of mortgage insurance is based on the ratio of the loan amount to the value of the property and is not finally determined with certainty until the lender knows the property value. In the GMP price, the packager shall include any maximum upfront mortgage insurance premium based upon the borrower's estimate of the property value and the amount that needs to be borrowed. The GMPA will inform the borrower that the upfront mortgage insurance premium, if any, may decrease or become unnecessary depending on the final appraised value of the property. The ''Other Required Settlement Costs'', discussed immediately below, would include any required reserves for mortgage insurance premiums. Because full underwriting information will not be available to the packager at the time the GMPA is provided, implementation issues are presented. Commenters are invited in Question 21 below to provide their views on how mortgage insurance should be addressed in Guaranteed Mortgage Package Agreements.

Under the proposal, reserves that are escrowed would be disclosed on the GMPA as ''Other Required Costs'' and subject to a 10% tolerance. The only costs that could be excluded from the guarantee and not subject to any tolerance would be those that fluctuate depending upon the borrower's choice, such as hazard insurance, per diem interest, and optional owner's title insurance. However, the Questions below ask commenters whether these items should also be included in the package at the required minimum amounts with a notation that ''optional costs'' are the responsibility of the borrower.

The proposal does not require packagers to itemize the services included in the GMPA. HUD believes however, that there are certain settlement services that are of specific interest and value to the borrower such as pest inspection, appraisal and the purchase of lender's title insurance (which may affect the cost of owner's title insurance). Some lenders may choose to forego some or all of these services. Therefore, HUD proposes that if any of these particular services are not anticipated to be included in the GMP, this fact must be disclosed on the GMPA.

Packagers may in GMP transactions provide a GMPA in lieu of the GFE. The revised instructions for the HUD–1/1A require that in Guaranteed Mortgage Packages, the HUD–1/1A must itemize the services provided, but not the specific charges for those services. However, because the amounts of certain individual charges needed to compute the finance charge and the APR under TILA and HOEPA, the packager must list the finance charges needed to calculate the APR on an addendum to the HUD–1 or HUD–1A. At Question 20, commenters are asked to provide their views on whether this approach adequately protects and preserves consumers' rights under TILA and HOEPA while facilitating packaging, and to suggest alternatives, if needed. Entities that do not choose to seek this safe harbor will continue to provide the GFE and HUD–1/1A disclosure scheme, as amended by this rule.

4. Contents of the Guaranteed Mortgage Package Agreement

The premise underpinning packaging is that firm, simple, guaranteed price quotes will enable borrowers to shop for mortgage loans with much greater confidence and certainty. The GMPA starts with a brief description of the function of the packager—what the packager is providing—and a statement that the interest rate on the proposed form, and the settlement costs quotation (if any), represent an offer to the borrower which is open and guaranteed for 30 days from when the document is delivered or mailed to the borrower, and which will immediately become a binding contractual agreement upon borrower acceptance and payment of a minimal engagement fee, subject only to acceptable final underwriting and property appraisal. The opening description also makes clear that any required settlement costs not separately itemized and estimated in Section III of the GMPA are the responsibility of the packager.

Section I of the GMPA provides the interest rate guarantee and APR along with an explanation that the interest rate is guaranteed through settlement if the borrower agrees now to the GMPA and locks-in this rate by a specified date/time. Any mortgage insurance premium included in the APR would be separately disclosed in Section I. It provides that if the borrower does not choose to commit immediately, it is guaranteed that the quoted interest rate will not change except in relation to changes in a specified index rate (or other such appropriate data or means as HUD may determine to assure that changes in the rate are reflective of the cost of funds and not simply to increase the packager's compensation).

Section II of the GMPA states that this package price covers all services, besides those listed in Section III, that are necessary to close the loan. The packager would, however, be required to inform the borrower if certain designated items are not anticipated to be included as part of the package including lender's title insurance, the pest inspection, and appraisal. Under the GMPA, any pest inspection report, credit report, and appraisal would be provided to the borrower upon the borrower's request. (On the HUD–1, borrowers will receive a listing of the specific services provided, but not the specific prices for each service. The total settlement costs will be provided.)

Section III of the GMPA provides a description of ''Other Required Settlement Costs'' which are outside the package and informs the borrower that reserves/escrow are subject to a 10% upper limit, or tolerance, at settlement absent unforeseeable and extraordinary circumstances. However, the 10% tolerance does not apply to hazard insurance and per diem interest in this category. The GMPA also makes clear that any required settlement cost not specifically identified on the GMPA as

[45] Through this requirement, discussed infra, HUD seeks to ensure that the rate of the loan does not vary after the borrower commits to a packager for reasons other than an increase in the cost of funds. There may be a variety of ways to solve this problem and HUD is seeking comments, in particular, on how to implement an interest rate guarantee.

outside a package, and itemized on the GMPA, is included in the guaranteed price quote and is the responsibility of the packager.

Section IV of the GMPA provides the borrower the cost of owner's title insurance, if available. For any package where the packager offers the borrower the option of paying all or part of the stated guaranteed and/or estimated settlement costs through a higher interest rate, that option will be explained in accordance with Section V of the GMPA. Similarly, where a packager offers the borrower the option of lowering the stated guaranteed interest rate by paying additional amounts at settlement, commonly referred to as discount points, that option will also be explained in accordance with Section V of the GMPA.

Section VI provides interest rates and adjustment terms related to adjustable rate mortgages, applicable prepayment penalties, and balloon payments. Section VII of the GMPA must be signed by an authorized agent of the packager and the borrower to become a binding contract for the Guaranteed Mortgage Package at the Guaranteed Mortgage Package price. After acceptance by the borrower, non-lender packagers must ensure that the lender sign the GMPA agreeing to provide the loan included in the Guaranteed Mortgage Package. HUD solicits comments on the issue of lender signatures on the GMPA in Question 18 below. Notwithstanding the basic objective of packaging, which is to dramatically improve the borrower's capacity to comparison shop, different entities may offer two types of packages. Some packagers may offer GMPs in which all settlement costs are included in the interest rate guarantee (in which case no guaranteed settlement cost quote will be provided), while other packagers may quote a guaranteed price for all settlement costs along with a (presumably lower) interest rate guarantee. The Special Information Booklet and other consumer education materials will alert borrowers to compare the combined impact of both settlement cost and interest rate guarantees when shopping among packagers, and will suggest that a borrower might wish to compare the APRs of the two products as well as consider how long the borrower plans to stay in the property; a longer mortgage term may mitigate in favor of a borrower choosing to pay settlement costs through a higher rate.

5. Interest Rate Guarantee

In the rule, HUD is requiring that Guaranteed Mortgage Packages include an interest rate guarantee. HUD's rationale for this requirement is that both the settlement costs and the interest rate need to be firm for borrowers to compare loan products. HUD recognizes, however, that after a borrower requests a GMPA but before locking in a rate, the interest rate on a loan may change based on market forces. Similarly, some borrowers choose to float even after they have committed to an originator, in the hopes that market interest rates will fall. In such instances, HUD believes that in the context of GMPs, it is necessary to assure that when the borrower is ready to lock, the interest rate will only be changed based on observable market changes, or based on other data or appropriate means to ensure the guarantee. One possibility is to have the rate move with an observable and verifiable index. Another is to have a rate publicly available. Whatever the ultimate methodology, it must be easily useable and verifiable by the borrower and the industry. Commenters are asked to address Question 13 concerning the use of an index or a substitute therefore to address this problem.

6. Scope of the Safe Harbor

The Secretary is exercising exemption authority under Section 8(c)(5) and Section 19 of RESPA to establish this carefully circumscribed guaranteed mortgage packaging safe harbor. The Secretary is establishing this safe harbor only for those Guaranteed Mortgage Package transactions that meet the requirements set forth in this rule. The Secretary has determined that the establishment of this safe harbor is necessary to allow this class of transactions— guaranteed packages of settlement services with the protections required under this rule— to be available to consumers to achieve the purposes of the Act. The Secretary has concluded that the availability of these packages to consumers will simplify their shopping for settlement services and allow them to gain the benefit of an active competitive marketplace where market forces lower settlement costs. For the same reasons, the Secretary has determined that payments and pricing arrangements between packagers and participating settlement service providers for Guaranteed Mortgage Packages as set forth in this rule shall not be construed as prohibited under Section 8 of RESPA as long as the requirements in this rule are satisfied. Pursuant to Section 8(c) (5) the Secretary has undertaken the necessary consultation with other agency heads as required prior to promulgating this exemption.

This safe harbor will allow packagers to inject pricing discipline to negotiate firm overall prices for essentially all settlement services and mortgage interest rates with participating settlement service providers. Some GMPs may require the use of affiliated entities, a practice prohibited by Section 8 except in limited circumstances. Other GMPs may involve arrangements between independent providers based on the projected volume of business to be referred. The safe harbor will apply in both of these arrangements. Without this safe harbor, Section 8(a)'s prohibition on referral fees may bar such arrangements and Section 8 (b)'s prohibitions may deter packagers from retaining profits that result from packaging, which could be regarded as unearned. Outside the safe harbor, where loan originators arrange discounted prices that are charged to consumers, HUD is proposing in this rulemaking to clarify that Section 8 is not violated (see above). Because HUD believes that the benefits to borrowers of packaging outweigh any protections offered by Section 8's provisions, the Secretary has concluded that such a carefully circumscribed safe harbor is appropriate, subject to the eligibility conditions set forth in this rule.

Accordingly, pursuant to Section 19, the Secretary has determined that the safe harbor is necessary for these prescribed transactions to achieve the purposes of the Act. Where the requirements are met, the safe harbor from Section 8 will permit payments or other things of value exchanged between a packager and entities participating in the package, and will insulate packager earnings from Section 8 scrutiny. Section 8 would, however, continue to prohibit any payments for the referral of business, kickbacks, splits of fees and unearned fees between the packager and any of the entities participating in the package on the one hand, and entities outside of the package on the other.[46] As long as the requirements of the safe harbor are satisfied, the exemption authority under Section 19 will create a safe harbor for packagers from the Section 8 requirements.

Under the safe harbor, as noted above, packagers would provide the GMPA in lieu of a GFE. HUD regards the provision of a GMPA as fully, indeed, more than satisfying the requirements of Section 5 of RESPA that borrowers receive a Good Faith Estimate of the

[46] Thus, for example, a real estate agent, outside of the package, would continue to be subject to Section 8 for accepting a payment from a packager for referring a customer to a package.

amount of charges for settlement services the borrower is likely to incur. Additionally, HUD believes that the GMPA, by itemizing a Guaranteed Mortgage Package price encompassing virtually all settlement charges, along with a limited number of itemized charges, including owner's title insurance, also more than satisfies the requirements of Section 4 of RESPA. Nevertheless, HUD is prepared to exercise the exemption authority under Section 19 to create a safe harbor for packagers from the disclosure requirements of Sections 4 and 5 of RESPA, if it deems such an exemption necessary.

The safe harbor is proposed to be available only where the transaction does not result in a high cost loan as that term is defined in the Home Ownership Equity Protection Act. See 15 U.S.C. 1601 (Supp II 1996). The safe harbor also may not be available for mortgages that exceed other limits or include other features identified by the Department during the course of this rulemaking as resulting in unreasonable settlement charges or other loan terms inimical to the purposes of RESPA.

In this rulemaking, in Question 12 below, HUD is soliciting comments on the scope of the safe harbor and in particular, how the safe harbor should apply to affiliated business arrangements.

D. Scope of the Proposed Rule

The proposed rule's new regulatory requirements will apply to first and second lien transactions, purchase money loans, and refinances. Home equity transactions are addressed in § 3500.7(f), under current RESPA regulations. At Question 26 the Department invites comments on this issue.

E. Contractual Remedies and Enforcement Priorities

For the safe harbor, the proposed rule intends that borrowers, individually or, where appropriate, as a class, may sue for specific performance or for damages pursuant to applicable State contract law provisions in the event a packager breaches a contract entered into pursuant to C., above.

Beyond any contractual remedies available to borrowers under state laws, HUD will regard noncompliance with a GMPA as an enforcement priority, and any entity found in violation of such a contract will not be able to claim a safe harbor under Section 8. As a result, those found in violation of a GMPA will be subject to Section 8 scrutiny and possible penalties as well as individual or class relief.

F. Preemption

Pursuant to Section 18 of RESPA, 12 U.S.C. 2616, the Secretary is authorized to determine whether any provisions of State law are inconsistent with any provision of RESPA. Where such a determination is made, after consultation with other appropriate Federal agencies, the Secretary may exempt any person subject to RESPA from compliance with said State law to the extent such compliance is inconsistent with RESPA. Question 22 below seeks comments on how this provision of RESPA should be applied in light of the provisions in the proposed rule.

IV. Questions for Commenters

Commenters are asked to address the following questions in their comments to the extent that they have views on these subjects.

The New Good Faith Estimate (GFE) Requirements

1. As proposed in Section III.A.(1), the proposed GFE form would briefly explain the originator's functions and that the borrower, not the originator, is responsible for shopping for his or her best loan. Does the language proposed adequately convey this message? If the commenter thinks otherwise, it should provide alternative language for the form that better explains the loan originator 's function to the borrower. Should the form also address agency requirements under state laws and how?

2. In Section III.B.(2) c., the proposed rule requires that the amounts estimated on the GFE for mortgage broker and lender origination charges may not vary at settlement absent unforeseeable circumstances. Should the rule provide for this ''unforeseeable circumstances'' exception? Are the particular circumstances specified in HUD's formulation in this proposal sufficiently encompassing? What evidence should a broker or lender be required to retain to prove the existence of such circumstances and justify any increase in charges at settlement?

3. In Section III.B.(2) c., the proposed rule establishes a 10% limit, or ''tolerance,'' for categories of settlement services and costs including third party services that the borrower shops for and escrow/reserves by which such costs cannot exceed the GFE estimates by 10% at settlement absent unforeseeable and extraordinary circumstances. It also establishes zero tolerances for origination charges and lender required lender selected third party costs and government charges that cannot vary from the estimate through settlement absent unforeseen circumstances. Are these appropriate tolerances and tolerance levels or should other tolerances/tolerance levels be established for these categories? Also, should a tolerance be established for borrower's title insurance? What alternative or additional means might be employed to ensure that loan originators take the care necessary to complete the GFE to ensure that it represents a Good Faith Estimate of final settlement costs?

4. In Section III.B.(2) d., the proposed rule would amend Regulation X to make clear that loan originators may enter into volume arrangements where such discounted prices are charged to their customers. Commenters are invited to provide their views on the ramifications, if any, of this clarification.

5. In Section III.B.(2) c., the proposed rule requires that the tolerances will apply to the GFE from the time the form is given by the loan originator through settlement. Also, in case it takes a substantial time for the borrower to decide to use the loan originator from the date the form is given, the rule and the form provide that the GFE need only be open for borrower acceptance for a minimum of 30 days from when the document is delivered or mailed to the borrower. After that time, the GFE could be ratified or superseded by the originator at the borrower's request. Is this expiration date appropriate to protect against unnecessary costs flowing from an indeterminate liability or for other reasons? Is 30 days too long or too short? Another possibility that commenters may consider is whether the numbers on the GFE should apply only from the time the borrower enters into an agreement with the loan originator. HUD also invites commenters' views on whether HUD now should require a borrower's signature on the GFE to memorialize acceptance and begin the period during which the estimates are binding.

6. In Section III.B.(1) b., the proposed rule simplifies the GFE by placing all loan origination costs in a small number of primary categories. This is intended to facilitate borrower understanding and shopping of major loan costs and minimize the proliferation of ''junk fees'' and duplicative charges. How could the GFE be made even simpler to facilitate borrower shopping? If the commenter believes greater itemization is desirable, what should be itemized and why?

7. In Section III.A.(3), the proposed rule requires that on the front of the proposed form mortgage brokers disclose the lender credit right below the total origination charges to: (a) Make

the borrower aware of the effect that the credit has to reduce total origination costs; (b) avoid confusion among borrowers; and (c) avoid giving any competitive disadvantage to either a broker or lender for the same loan. What, if any, other approach to address these concerns is better and why? Should the new GFE form disclose this credit at the bottom of the proposed form because the credit can be applied to all settlement costs?

8. As proposed in Section III. A. (3), as another step to avoid borrower confusion and any competitive disadvantage among lenders and brokers, the proposed rule breaks out on Attachment A–1, rather than on the front of the proposed form, the ''Loan Origination Charges'' into ''Lender Charge'' and ''Broker Charge.'' How, if at all, does this approach advantage or disadvantage either lenders or brokers or confuse borrowers in comparison shopping? Would the industry and borrowers be better served if there is a breakout of ''Lender charges'' and ''Broker charges'' on the front of the form and why?

9. As proposed in Section III. B. (2) e, the new GFE will consolidate certain charges into lump sum categories (e.g. lender required third party services). To permit the borrower to compare the new GFE to the HUD–1, it will be necessary for HUD to establish additional instructions to guide the reader so that the new GFE could be compared to the HUD–1. Would it be better to change the HUD–1 so the fee categories correspond to the groupings on the GFE and the two documents can be more easily compared? If commenters support changes to the HUD–1 to make it more comparable to and compatible with the new GFE, how extensive should these changes be and in what areas? Should the HUD–1 continue to list all charges for services or should it also be shortened and simplified as well to cover only categories of services?

10. Should a safe harbor from Section 8 scrutiny be established for transactions where the mortgage broker signs and contractually commits to its charges on the GFE? The purpose of proposing this safe harbor would be to encourage a firm contractual commitment to borrowers, before they pay a fee and commit to a particular mortgage broker, so that the borrower can shop among mortgage brokers. Considering the proposed changes to the GFE, the proposed packaging safe harbor and HUD's current guidance on mortgage broker fees, is this safe harbor necessary for industry or borrowers and why? In light of the proposed rule's other provisions is any other additional disclosure for mortgage brokers warranted, such as an additional statement of what the broker's fees are and how they function?

Guaranteed Mortgage Package Agreements

11. Is a safe harbor along the lines proposed in Section III. C. (1) of this rule necessary to allow lump sum packages of settlement services to become available to borrowers? Would the proposed clarification by HUD that discounts may be arranged, if passed on to borrowers and not marked up, suffice to make packages available to borrowers? Would a rule change to approve volume discounts and/or mark-ups when a package is involved suffice? Would it suffice to trim the disclosure requirements for packaging and offer the option of providing a streamlined GFE to those who packaged?

12. As proposed in Section III. C. (6) is the scope of the safe harbor appropriately bounded in applying to all packagers and participants in packages? The safe harbor also currently does not apply to referrals to the package. Should there also be a bar against part time employees of other providers working for the package to steer business? How should the safe harbor apply to affiliated business arrangements to protect borrowers from steering?

13. As proposed in Section III. C (5), to qualify for the safe harbor, the packager must include an interest rate guarantee with a means of assuring that when the rate floats, it reflects changes in the cost of funds not an increase in originator compensation. For this purpose, the rule suggests tying the rate to an observable index or other appropriate means. What other means could assure borrowers that the rate of a lender was not simply being increased to increase origination profits? For example, would a lender's commitment to constantly make rates public on a web site be a useful control? If an index is the best approach, how should it be set? If an index approach is approved, should each lender be allowed to pick its own observable index?

14. As discussed in the preamble to the rule in Section III. C (5), if an observable index or other appropriate means of protecting borrowers from increases in lender compensation when the borrower floats in a guaranteed packaging approach is not practical, should HUD provide a packaging safe harbor only for mortgage brokers? Such a mortgage broker safe harbor would require disclosing the lender credit to the borrower in broker guaranteed packages. The theory for the safe harbor would be that any amounts in indirect fees could be credited to borrowers taking away any incentive for an increase in rates to increase compensation. Should this be offered in any event?

15. As proposed in Section III. C (6), under the rule, mortgages with total fees or a rate covered by the Home Ownership and Equity Protection Act (HOEPA) would be subject to the new GFE disclosure requirements; however, HOEPA loans would not qualify for the guaranteed package safe harbor. Is this exclusion appropriate considering, on the one hand, that packaging promises borrowers a simpler way to shop and make transactions more transparent? On the other hand, the safe harbor could be provided for a loan that has very high rate and/or fees and may be predatory. The proposal also says that during the rulemaking other limitations may be established to exclude high cost and/or loans with predatory features from the packaging provisions. HUD invites comments on whether HOEPA loans, any other loans, or features of loans should be included or excluded from the safe harbor and why.

16. As proposed in Section III.C (3), the GMPA provides that the offer must be open to the borrower for at least 30 days from when the document is delivered or mailed to the borrower. Is this an appropriate minimum time period to ensure that the borrower has an adequate opportunity to shop?

17. As proposed in Section III. C (4), the rule currently provides that the Guaranteed Mortgage Package agreement must indicate that certain reports such as the appraisal, credit report, and pest inspection are available to the borrower upon the borrower's request. Also, packagers may decide to forego such reports or services (i.e. lender's title insurance) and must inform the borrower that such reports or services are not anticipated to be included in the package price. Are these adequate protections for the borrower? HUD is aware that other laws such as Regulation B (ECOA) provide certain rights to borrowers with respect to obtaining some of these reports. In order to qualify for the safe harbor HUD has created additional reporting requirements. Are these additional reporting requirements appropriate?

18. Should additional consumer protections be established for packaging? For example, should additional qualifications be established for ''packagers'' to ensure that borrowers are protected against non-performance including the unavailability of a mortgage that could result in a borrower ''losing'' a house? For example, should

there be a requirement that a packager must have sufficient financial resources to credibly back the guarantee? Is it necessary to require a lender signature on the GMPA to ensure that the borrower receives the loan at the time of settlement? How can the borrower's interests be protected without unduly burdening the process or unduly limiting the universe of packagers?

19. Consistent with the HUD-Fed Report, the rule proposes that certain charges, such as hazard insurance and reserves, are outside the package as other or optional costs. Is this the right approach or should these charges be disclosed as the minimum amounts required by the lender and required to be inside the package? Would the latter better serve the objective of establishing a single figure for the borrower to shop with?

20. The rule proposes in Section III. C (3), that under Guaranteed Mortgage Packaging, the HUD–1 will list the settlement services in the package but not the specific charges for each service. Certain third party charges are excluded from the calculation of the finance charge and the APR under TILA and HOEPA. Commenters are invited to express their views on whether the approach in the rule satisfies or whether alternative approaches to cost disclosures should be established to ensure consumers' rights under TILA and HOEPA are protected while facilitating packaging. More broadly, commenters are invited to provide their views on means of better coordinating RESPA and TILA disclosures.

21. Commenters are asked to provide their views on how the rules should treat mortgage insurance? The rule proposes in Section III. C (3), that the guaranteed package would include any mortgage insurance premiums in the APR and up-front costs of mortgage insurance in the guaranteed package. ''Other Required Costs'' would include reserves for mortgage insurance premiums. However, because the packager will not have an appraisal at the time the GMPA is provided, the packager may not have firm information to provide a definite figure. Another possibility is to exclude mortgage insurance from the package but notify the borrower that mortgage insurance may be an ''Other Required Costs'' and present the borrower an estimate subject to a tolerance, if mortgage insurance is necessary. This approach would exclude a major charge from the package. HUD recognizes that there are state laws that prohibit rebates or any splitting of commissions for mortgage insurance. How, if at all, should this impact the decision to include mortgage insurance in packages of settlement services?

22. To what extent, if any, do inconsistencies currently exist, or would they exist upon promulgation of the proposed rule between State laws and RESPA? Specifically, what types of State laws result in such inconsistencies and merit preemption? What, if any, provisions of the proposal should be revised to facilitate any necessary preemption?

23. The rule proposes that the GFE and the GMPA be given subject to appraisal and underwriting. How should the final rule address the matter of loan rejection or threatened rejection as a means of allowing the originator to change the GFE or GMPA to simply earn a higher profit?

24. To what extent, if any, should direct loan programs such as those provided by the Rural Housing Service of the Department of Agriculture be treated differently under the new regulatory requirements proposed by this rule?

25. As proposed, the GFE and GMPA currently contain sections for loan originators and packagers to indicate the specific loan terms for adjustable rate mortgages, prepayment penalties, and balloon payments. Are these appropriate loan terms to include on these forms, and what, if any, other mortgage terms or conditions should be listed on the forms?

26. What are the arguments for or against limiting the proposed rule to purchase money, first and second lien, and refinancing loans as opposed to offering it to home equity, reverse mortgage and other transactions? Should there be any additional requirements for so-called B, C, and D loans?

27. As proposed, the Guaranteed Mortgage Package includes one fee for settlement services required to complete a mortgage loan. The fee for the package will include loan origination fees, typically referred to as ''points.'' As points are generally deductible under IRS rules, comments are invited as to how to determine which portion of the package prices should be deemed to constitute points.

28. To what extent do the proposed changes to the definition of application in Section III. B (2) a., and requirements for delivery of the GFE impact other federal disclosure requirements, such as those mandated by the Truth in Lending Act? How can the disclosure objectives of the proposed rule be harmonized with such other disclosure requirements?

29. The proposed rule in Section III. B (2) c., would require a loan originator capable of offering an alternative loan product to provide a prospective borrower, upon the borrower's request, with a new GFE if, after full underwriting, the borrower does not qualify for the loan identified on the original GFE. Is this approach appropriate? What other options should be considered where borrowers do not qualify for the loan product initially sought?

30. The proposed rule in Section III. B (2) c., would require loan originators to provide qualified borrowers with an amended GFE, identifying any changes in costs associated with changes in the interest rate, where the borrower elects not to lock-in the interest rate quoted on the original GFE at the time it is provided. Is this an appropriate requirement? What alternatives, if any, should HUD consider?

V. Findings and Certifications

The Paperwork Reduction Act

The information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The Real Estate Settlement Procedures Act of 1974 requires settlement providers to disclose to homebuyers certain information at or before settlement and pursuant to the servicing of the loan and escrow account. This includes a Special Information Booklet, a Good Faith Estimate, an Initial Servicing Disclosure, a Settlement Statement (the Form HUD–1 or Form HUD 1–A), and when applicable an Initial Escrow Account Statement, an Annual Escrow Account Statement, an Escrow Account Disbursement Disclosure, an Affiliated Business Arrangement Disclosure, and a Servicing Transfer/Disclosure. This information requirement under OMB control number 2502–0265 consolidates information previously collected under OMB control numbers 2502–0458, 2502–0491, 2502–0501, 2502–0516, and 2502–0517.

Estimate of the total reporting and recordkeeping burden that will result from this information requirement is as follows:

Respondents: Individuals or households, business or other for-profit entities.

Frequency of submission: On occasion and annually.

Reporting burden: Number of respondents: 20,000, Annual responses: 105,300,000, Hours per response: 0.04.

Total estimated burden hours: 6,500,000.

The status of this information collection is that it is a reinstatement, with changes, of a previously approved collection. In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4668) and must be sent to:

Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, *lauren_wittenberg@opm.eop.gov,* Fax: (202) 395–6974

and;

Gloria Diggs, Reports Liaison Officer, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing & Urban Development, 451 Seventh Street, SW, Room 9116, Washington, DC 20410.

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 General Counsel, Regulations Division, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

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''), which the President issued on September 30, 1993. This rule was determined economically significant under E.O. 12866. 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. The Initial Economic Analysis prepared for this rule is also available for public inspection in the Office of the Rules Docket Clerk.

Federalism Impact

This proposed 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 Executive Order 13132 (entitled ''Federalism'').

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule and has determined that the rule would have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

In accordance with section 603 of the Regulatory Flexibility Act, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and has been made part of the Economic Analysis prepared under Executive Order 12866. The IRFA portion, however, of the combined analysis is published as an appendix to this proposed rule. The IRFA was also submitted to the Chief Counsel for Advocacy of the Small Business Administration for review and comment on its impact on business.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not, within the meaning of the UMRA, impose any Federal mandates on any State, local, or tribal governments nor on the private sector.

Congressional Review of Final Rules

This rule constitutes a ''major rule'' as defined in the Congressional Review Act (5 U.S.C. Chapter 8). At the final rule stage, this rule will have a 60-day delayed effective date and be submitted to the Congress in accordance with the requirements of the Congressional Review Act.

VI. Rule Language

List of Subjects in 24 CFR part 3500

Consumer protection, Condominiums, Housing, Mortgagees, Mortgage servicing, Reporting, and recordkeeping requirements.

Accordingly, for the reasons set out in the preamble, part 3500 of title 24 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation shall continue to read as follows:

Authority: 12 U.S.C. 2601 *et. seq.;* 42 U.S.C. 3535(d).

2. In § 3500.2, paragraph (b) is amended by revising the definitions of Application, Good faith estimate, and Mortgage broker and adding the following definitions of Guaranteed mortgage package, Loan originator, Mortgage broker loan, No tolerance, Packager, Packaged services, Participating settlement service provider, Par value, Tolerance, Unforeseeable and extraordinary circumstances, and Zero tolerance:

§ 3500.2 Definitions.

* * * * *

(b) * * *

Application means the submission of credit information (Social Security number, property address, basic income information, the borrower's information on the house price or a best estimate on the value of the property, and the mortgage loan needed) by a borrower in anticipation of a credit decision, whether oral, written or electronic, relating to a federally related mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a pre-qualification and not an application for a federally related mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan.

* * * * *

Good faith estimate means an estimate of settlement costs on the required format prescribed at Appendix C to this part prepared in accordance with § 3500.7.

* * * * *

Guaranteed mortgage package means a guaranteed package of mortgage related settlement services and an interest rate guarantee for a federally related mortgage loan that is offered to a consumer under a Guaranteed Mortgage Package Agreement (GMPA) in accordance with § 3500.16.

Loan originator means a lender or mortgage broker.

* * * * *

Mortgage broker means a person or entity that renders origination services in a table funding or intermediary transaction. Where a mortgage broker is the source of the funds for a transaction, the mortgage broker is a ''lender'' for purposes of this part.

* * * * *

Mortgage broker loan is a federally related mortgage loan that is originated by a mortgage broker.

No tolerance means that the charges may vary without being subject to any tolerance.

Packager means a person or other entity that offers and provides guaranteed mortgage packages to borrowers in accordance with § 3500.16.

Packaged services are settlement services that the lender requires for settlement and includes all services except per diem interest, hazard insurance, escrow/reserves, and optional settlement services.

Participating settlement service provider means a settlement service provider that provides settlement services in a guaranteed mortgage package and whose charges are included in the guaranteed mortgage package price.

Par value means the principal amount of the loan.

* * * * *

Tolerance means a variation above an estimate of a category of settlement costs. Tolerance is expressed as a percentage of the estimate.

Unforeseeable and extraordinary circumstances means acts of God, war, disaster, or any other emergency, making it impossible or impractical to perform.

Zero tolerance means the amount listed may not vary at closing, except in unforeseeable and extraordinary circumstances.

* * * * *

3. In § 3500.7, paragraph (a) introductory text and (a)(2) through (e) are revised, paragraph (f) is redesignated as paragraph (g); and a new paragraph (f) is added to read as follows:

§ 3500.7 Good faith estimate

(a) Lender to provide. Except as provided in paragraphs (a), (b) or (f) of this section, or where a guaranteed mortgage package agreement is provided in accordance with § 3500.16 of this part, the lender shall provide all applicants for a federally related mortgage loan with a good faith estimate. The lender shall provide the good faith estimate either by delivering the good faith estimate or by placing it in the mail to the loan applicant, not later than three business days after an application is received or prepared. If the application is denied before the end of the three-business-day period, the lender need not provide the denied borrower with a good faith estimate. A lender shall not collect any fee in connection with the application or the good faith estimate beyond that which is necessary to provide the good faith estimate.

* * * * *

(2) For all mortgage loans, third party settlement services, governmental fees and charges, any other loan related expenses that are not paid to and retained by the originator must be reported in their entirety in the appropriate categories on the good faith estimate.

* * * * *

(b) Mortgage broker to provide. In the event an application is received by a mortgage broker who is not an exclusive agent of the lender, the mortgage broker must provide a good faith estimate by delivering the good faith estimate or by placing it in the mail to the loan applicant, not later than three business days after an application is received or prepared. As long as the mortgage broker has provided the good faith estimate, the funding lender is not required to provide an additional good faith estimate, but the funding lender is responsible for ascertaining that the good faith estimate has been delivered. If the application is denied before the end of the three-business-day period, the mortgage broker need not provide the denied borrower with a good faith estimate. A mortgage broker shall not collect any fee in connection with the application or the good faith estimate beyond that which necessary to provide the good faith estimate.

(c) Content of good faith estimate. As prescribed in and completed in accordance with the instructions in Appendix C to this part, the good faith estimate must state the property address, loan amount, interest rate used to calculate the estimated amounts, the Annual Percentage Rate (APR) for the loan including mortgage insurance, and the monthly payment for principal and interest and mortgage insurance. The form must also state whether the loan is an adjustable rate mortgage, contains a prepayment penalty clause or has a balloon payment, the functions of the originator, and the total amount of charges for each category of services: loan origination, interest rate dependent payment, lender required and selected third party services, title services and title insurance, shoppable lender required third party services, government services, amounts for escrow/reserves, per diem interest, hazard insurance and optional owner's title insurance. Attachment A–1 of the good faith estimate must indicate the subtotals of the origination charges to the lender and to the mortgage broker, and the subtotals of all the charges and fees for title and for settlement agent services.

(d) Accuracy of good faith estimate. (1) The amounts of the categories of loan origination charges, lender required and selected third party settlement service provider charges, lender selected title services and title insurance, and governmental fees and charges reported on the good faith estimate shall not vary from the time the good faith estimate is given to the borrower and may not be exceeded at settlement absent unforeseeable and extraordinary circumstances. The estimates in the good faith estimate shall be open to the borrower for a minimum of 30 days from when the document is delivered or mailed to the borrower. Within the 30 days the borrower must agree to go forward and pay the additional money to complete the underwriting process. If the offer expires, the borrower may ask the loan originator to ratify such estimate or request a new one. If the cost at settlement exceeds the estimate reported on the good faith estimate, absent unforeseeable and extraordinary circumstances, the borrower may withdraw the application and receive a full refund of all loan-related fees and charges. The loan originator must document any such circumstances and retain the document in accordance with § 3500.10(e).

(2) The amounts for lender required third party services must include an estimate of the maximum mortgage insurance premium to be charged upfront to the borrower based upon the borrower's assertion of the value of the property and loan amount needed and indicate that the mortgage insurance premium may decrease or be removed after full underwriting;

(3) The amounts of the categories of borrower selected title services and title insurance, shoppable lender required third party services, and reserves/escrow deposits charged to a borrower may not vary at settlement by greater

than a tolerance of 10% from the amounts for such categories reported on the good faith estimate, except when a borrower chooses to purchase a more expensive service, absent unforeseeable and extraordinary circumstances.

(4) The amounts of the categories of per diem interest, hazard insurance and optional owner's title insurance reported on the good faith estimate shall be carefully prepared based upon the originator's knowledge of relevant prices, but are not subject to tolerances, which means that charges may vary without being subject to any tolerance.

(5) In mortgage broker loans, the borrower payment to the lender for a lower interest rate must be paid in full to the lender and the lender payment to the borrower for a higher rate must include any lender payments for the transaction other than for the par value of the loan.

(6) Loan originators must include all charges correctly within their prescribed category on the good faith estimate and not include any ''mark ups'' or ''up charges'' in their estimates of charges for categories III(C) through (J) of the good faith estimate. The Loan originator shall include all of its charges in the origination charges and interest rate dependent categories.

(7) No loan originator shall be held responsible for charges imposed on the borrower at settlement for shoppable lender required third party services unless the borrower asked where the services could be obtained within the tolerance, used a settlement service provider identified by the originator, and was charged an amount in excess of the tolerance.

(e) Form of good faith estimate. A good faith estimate required format is set forth in Appendix C to this part. The good faith estimate may be provided together with disclosures required by the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, so long as all required material for the good faith estimate is grouped together.

(f) Particular providers required by lender. (1) If the lender requires the use (see § 3500.2, ''required use'') of a particular provider of a settlement service, other than the lender's own employees, and also requires the borrower to pay any portion of the cost of such service, the good faith estimate must identify the required settlement service provider.

(2) Except for a provider that is the lender's chosen attorney, credit reporting agency, or appraiser, if the lender is in an affiliated business relationship (see § 3500.15) with a provider, the lender may not require the use of that provider.

(3) If the lender maintains a controlled list of required providers (five or more for each discrete service) or relies on a list maintained by others, and at the time of application the lender has not yet decided which provider will be selected from that list, then the lender may satisfy the requirements of this section if the lender provides the borrower, on the good faith estimate, with the names of the required providers, and the estimated charge for the particular settlement service.

* * * * *

4. In § 3500.8, the third sentence of paragraph (a) is revised to read as follows:

§ 3500.8 Use of HUD–1 or HUD–1A settlement statements.

(a) * * * Alternatively, the form HUD–1A may be used for these transactions, but not for transactions in which there is a lender credit to the borrower. * * *

* * * * *

5. In § 3500.10, a new sentence is added to paragraph (e) to immediately follow the second sentence to read as follows:

§ 3500.10 One-day advance inspection of HUD–1 or HUD–1A settlement statement; delivery; recordkeeping.

(e) * * * Loan originators shall retain documentation of unforeseeable and extraordinary circumstances related to good faith estimates provided to borrowers and packagers shall retain documentation of such circumstances related to guaranteed mortgage package agreements provided to borrowers for five years after settlement.* * *

* * * * *

6. In § 3500.14, a new paragraph (g)(1)(viii) is added to read as follows:

§ 3500.14 Prohibition against kickbacks and unearned fees.

* * * * *

(g)(1)(viii) Any discounts negotiated among settlement service providers, packagers, or any other entities for settlement services provided that the entire discounted price is charged to the borrower and reported as part of the total charge within Sections III(C) through (J) of the good faith estimate as appropriate.

* * * * *

§ 3500.16 [Redesignated as §3500.20]

7. In § 3500.16 is redesignated as § 3500.20 and a new § 3500.16 is added to read as follows:

§ 3500.16 Guaranteed Mortgage Package—Safe Harbor.

(a) General. A guaranteed mortgage package is defined in § 3500.2.

(b) Violation and safe harbor. A guaranteed mortgage package, including payments, discounts, pricing arrangements or any other exchanges of things of value by and between persons or entities offering their services and compensated through guaranteed mortgage packages (hereinafter ''packagers'') and participating settlement service providers as part of such a transaction, shall not violate section 8 of RESPA or § 3500.14 and satisfies sections 4 and 5 of RESPA if the conditions set forth in this section are met.

(c) Criteria for guaranteed mortgage package. In order to qualify for the safe harbor stated in paragraph (b) of this section, packagers must deliver a guaranteed mortgage package offer within 3 days of application or such time as may be reasonable in special cases but prior to the borrower paying any fee, that includes:

(1) A package of designated lender required settlement services at a guaranteed price from the time the guaranteed mortgage package is offered by the packager to the borrower through settlement provided that the borrower accepts the guaranteed mortgage package agreement within 30 days, or such greater period offered by the packager, from when the document is delivered or mailed to the borrower;

(2) A mortgage loan with an interest rate guarantee and an Annual Percentage Rate (APR) that is guaranteed through settlement provided that the borrower accepts the guaranteed mortgage package agreement within 30 days, or such greater period offered by the packager, and the interest rate is adjusted only to reflect changes in market interest rates based on movement in a observable and verifiable index or other appropriate measure; and

(3) A guaranteed mortgage package agreement as prescribed in and completed in conformity with Appendix F to this part which:

(i) Explains that the guaranteed mortgage package includes necessary settlement services required by the lender and guarantees a package price for these services through settlement provided that the borrower accepts the GMPA within 30 days, or such greater period offered by the packager, from when the document is delivered or mailed to the borrower;

(ii) Commits the packager to provide all settlement services and includes all charges required to complete your mortgage except those specified as other required settlement costs and advises the borrower if the packager anticipates whether a pest inspection, lender's title

insurance, credit report, and/or appraisal will be anticipated;

(iii) Identifies and provides estimates for other required settlement costs, such as per diem interest, reserves/escrow, and hazard insurance, and optional owner's title insurance and explains that any required settlement costs not separately itemized and estimated are the responsibility of the packager;

(iv) Identifies and explains any borrower option to utilize payments to or from the lender as a result of the interest rate to pay settlement costs or adjust the interest rate and mortgage payments;

(v) Identifies any reports such as the pest inspection, lender's title insurance, appraisal or credit report for the loan transaction that are available to the borrower at the borrower's request;

(vi) Specifies that the packager will ensure that a mortgage loan is provided as part of the package and that, after acceptance by the borrower and the lender, the lender participating in the package shall provide a loan with the same terms as set forth in the guaranteed mortgage package agreement;

(vii) Advises the borrower of whether the loan is an adjustable rate mortgage and the terms of the mortgage, whether there is a prepayment penalty and that the borrower can request its terms, whether there is a balloon payment, whether the guaranteed mortgage package price includes an upfront maximum mortgage insurance premium based upon the borrowers assertion of the value of the property and loan amount needed and that the mortgage insurance premium may decrease or be removed after full underwriting; and

(viii) Commits the packager to the terms of the guaranteed mortgage package agreement upon borrower acceptance and payment of any fee, subject only to acceptable final underwriting and property appraisal.

(d) Impact on Good faith estimate and HUD–1/1A. Where a packager satisfies the criteria in paragraph (c) of this section, the packager shall provide the borrower the guaranteed mortgage package agreement in lieu of the good faith estimate. In loans originated through guaranteed mortgage package agreements, the HUD–1/1–A shall be completed at settlement by itemizing all the included services (but not the charges) of third party settlement service providers that were performed for the guaranteed mortgage package price. The guaranteed mortgage package price shall be shown as the origination fee on line 801 of the HUD–1/HUD–1A. Additionally, the packager must list the finance charges needed to calculate the APR on an addendum to the HUD–1 or HUD–1A.

(e) Exclusions from safe harbor.

(1) Notwithstanding the existence of a guaranteed mortgage package, section 8 of RESPA remains applicable to payments by and between packagers or participating settlement service providers and parties outside the guaranteed mortgage package.

(2) The Affiliated Business Arrangement (AfBA) exemption requirements, set forth in § 3500.15, remain in effect when a borrower is referred to a packager by a person or entity not otherwise participating in the guaranteed mortgage package who is an affiliate of the packager or any participating settlement service provider.

(3) The guaranteed mortgage package safe harbor shall not be available where the rate or points and fees of a Federally related mortgage loan make the loan subject to the Home Ownership Equity Protection Act (HOEPA).

§ 3500.19 [Amended]

8. In § 3500.19(c) the cross references to ''§ 3500.16'' and to ''section 3500.16'' are both revised to read ''§ 3500.20''

9. Appendix A to part 3500—Instructions for Completing HUD–1 and HUD–1A Settlement Statements is amended as follows:

Appendix A to Part 3500—Instructions for Completing HUD–1 and HUD 1–A Settlement Statements; Sample HUD–1 and HUD 1A Statements

a. The second paragraph of the General Instructions is revised to read as follows:

General Instructions

* * * * *

Except with respect to a loan resulting from a Guaranteed Mortgage package, the settlement agent shall complete the HUD–1 to itemize all charges imposed upon the Borrower and the Seller by the loan originator and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or the Seller will pay for at settlement. Charges to be paid outside of settlement, including cases where a non-settlement agent (i.e., attorneys, title companies, escrow agents, real estate agents or brokers) holds the Borrower's deposit against the sales price (earnest money) and applies the entire deposit towards the charge for the settlement service it is rendering, shall be included on the HUD–1 but marked ''P.O.C.'' for ''Paid Outside of Closing'' (settlement) and shall not be included in computing totals. P.O.C. items should not be placed in the Borrower or Seller columns, but rather on the appropriate line next to the columns. In the case of loans where settlement services are paid through the interest rate, any charges to be paid by the lender should not be marked as P.O.C. but should be shown in the appropriate column and used in computing totals. In loans originated through guaranteed mortgage package agreements, the HUD–1/1-A shall indicate through checkmarks in the appropriate column which third party settlement services were performed for the guaranteed mortgage package price. The guaranteed mortgage package price shall be shown on line 801. Additionally, the finance charges needed to calculate the APR will be disclosed in an addendum on the HUD–1.

* * * * *

b. The Line Item Instructions for the HUD–1 paragraph describing line 204–209 are revised to read as follows:

* * * * *

Lines 204–209 are used for other items paid by or on behalf of the Borrower. Examples include cases in which the Seller has taken a trade-in or other property from the Borrower in part payment for the property being sold. They may also be used in cases in which a Seller (typically a builder) is making an ''allowance'' to the Borrower for carpets or drapes which the Borrower is to purchase separately. Lines 204–209 can also be used to indicate any Seller financing arrangements or other new loan not listed in Line 202. For example, if the Seller takes a note from the Borrower for part of the sales price, insert the principal amount of the note with a brief explanation on Lines 204–209. Additionally, a blank line in this series shall be used to record the total of all payments from the Lender to the Borrower based on the transaction, including payments based on a higher interest rate.

* * * * *

c. Following the instructions for HUD–1 Line 603, Section L. Settlement Charges is revised to read as follows:

* * * * *

Section L. Settlement charges. For all items except for those paid to and retained by the Loan Originator, the name of the person or firm ultimately receiving the payment should be shown. In the case of loans where settlement services are paid through the interest rate, any charges to be paid by the lender should be shown in the appropriate column used in computing totals.

* * * * *

d. The paragraph immediately following ''Line Item Instructions for Completing HUD—1A'' is revised to read as follows:

* * * * *

Note: HUD–1A is an optional form that may be used for refinancing and subordinate lien federally related mortgage loans, as well as for any other one-party transaction that does not involve the transfer of title to residential real property or does not involve any lender payments to the borrower based on the transaction, including any payments based on a higher interest rate. The HUD–1 form may also be used for such transactions, by utilizing the borrower's side of the HUD–1 and following the relevant parts of the Line Item Instructions. The use of the HUD–1 or HUD–A is not mandatory for open-end lines

of credit (home-equity plans), as long as the provisions of Regulation Z are followed.

* * * * *

e. For HUD 1–A, the second paragraph following ''General Instructions'' is revised to read as follows:

* * * * *

The settlement agent shall complete the HUD–1A to itemize all charges imposed upon the borrower by the lender, whether to be paid at settlement or outside of settlement, and any other charges that the borrower will pay for at settlement. For all items except for those paid to and retained by the lender, the name of the person or firm ultimately receiving the payment should be shown together with the total amount paid to such person in connection with the transaction. In loans originated through guaranteed mortgage package agreements, the HUD–1A shall be completed at the time of settlement by indicated through checkmarks in the appropriate column which settlement services were performed for the guaranteed mortgage package price. The guaranteed mortgage package price shall be shown on line 801. Additionally, the finance charges needed to calculate the APR will be disclosed in an addendum on the HUD–1A.

10. Appendix C to part 3500 is revised in its entirety, including the heading, to read as follows:

Appendix C to Part 3500—Instructions for Completing Good Faith Estimate; Sample Good Faith Estimate

Instructions for completing the Good Faith Estimate

The following are instructions for completing the Good Faith Estimate required under section 5 of RESPA and Regulation X of the Department of Housing and Urban Development (24 CFR 3500.7). This form is to be used as a statement of estimated settlement charges. The instructions for completion of the Good Faith Estimate are primarily for the benefit of the loan originator who prepares the form and need not be transmitted to the borrower(s) as an integral part of the Good Faith Estimate.

General Instructions

The loan originator preparing the Good Faith Estimate may fill in information and amounts on the form by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Under these instructions the ''form'' refers to the Good Faith Estimate form.

All fees and charges shall be disclosed in dollar amounts. Percentages may be added, when applicable.

Specific Instructions

I. *Our Services.* Loan originators shall include a paragraph substantially the same as the paragraph set forth on the form in this Appendix. This paragraph explains the services provided by the loan originator and emphasizes that the borrower should shop and compare different loans and originators to find the best loan for his or her individual situation.

II. *Loan Terms.* Loan originators shall fill in the mortgage amount, indicate whether the loan is a fixed or variable loan, specify the interest rate and Annual Percentage Rate (APR) and fill in the length of the loan (i.e. number of years/months) and the monthly payment, including any mortgage insurance.

III. *Settlement Costs.* This section covers the settlement costs associated with the mortgage loan and warns the borrower that the costs may change if a different mortgage product is chosen or the interest rate changes.

III.A. *Origination Charges.* Loan originators shall total all origination charges to the lender and the broker in this category on the form. For mortgage brokers, these charges shall include all charges from the borrower that are paid to the mortgage broker for the transaction. For lenders, these charges shall include all direct charges from the borrower for the transaction, other than discount points reported in line III B (2). The estimated total origination charges shall not vary from the actual costs at the time of settlement (0% tolerance), absent unforeseeable and extraordinary circumstances.

III.B. *Interest Rate Dependent Payment.*

(1) In loans originated by mortgage brokers, mortgage brokers shall subtotal any lender payments to the borrower for a higher interest rate as well as any other lender payments for the transaction other than for the par value of the loan in this category on the form.

(2) In loans originated by mortgage brokers, mortgage brokers shall subtotal any borrower payments to the lender for a lower interest rate.

The mortgage broker shall include the payments in (1) and (2) when computing the net loan origination charge due from borrower (Sum of A and B). Lenders may complete this section at their option.

III.C. *Lender Required and Selected Third Party Services.* Loan originators shall subtotal all charges for lender required and lender selected third party services in this section on the form. This subtotal shall cover all such services except for title related services and title insurance in connection with the borrower's loan and shall not vary from actual costs at the time of settlement (0% tolerance), absent unforeseeable and extraordinary circumstances.

III.D. *Title Services and Title Insurance.* Loan originators shall subtotal all fees or charges for title and settlement agent services and title insurance in this category of the form. On the form, the loan originator also must indicate whether the services and insurance are loan originator selected or borrower selected. If title services and insurance are loan originator/lender selected, the estimate shall not vary from actual costs at the time of settlement (0% tolerance), absent unforeseeable and extraordinary circumstances. If title services and/or insurance are shoppable by the borrower, and the borrower ultimately elects to use a provider identified by the loan originator/lender, the final amount at settlement may not exceed the estimate by more than 10% (10% tolerance) absent unforeseeable and extraordinary circumstances, except when a borrower chooses to purchase a more expensive service.

III.E. *Shoppable Lender Required Third Party Services.* Loan originators shall subtotal all charges for loan originator/lender required third party services in this section. If services are shoppable by the borrower, and the borrower ultimately elects to obtain some or all of these services through the loan originator, the final amount at settlement may not exceed the loan originator's estimate by more than 10% (10% tolerance) absent unforeseeable and extraordinary circumstances, except when a borrower chooses to purchase a more expensive service.

III.F. *Government Charges—Taxes (State and Local).* Loan originators shall subtotal all state and local fees, charges, and taxes that will be required at settlement in this section. This estimate shall be based on an assumed settlement date that the loan originator will specify on the form. The estimate shall not vary from actual costs at the time of settlement (0% tolerance) for the assumed settlement date, absent unforeseeable and extraordinary circumstances.

III.G. *Reserves/Escrow.* Loan originators shall subtotal reserves/escrow amounts that will be required by the lender at settlement. This section shall include only required escrow items such as taxes, hazard insurance, and mortgage insurance. The estimate shall not vary from the actual costs required for reserves/escrow at the time of settlement by more than 10% (10% tolerance) absent unforeseeable and extraordinary circumstances, except when a borrower chooses to purchase a more expensive service.

III.H. *Per Diem Interest.* Loan originators shall disclose the estimated cost of the minimum amount of per diem interest that the lender will charge in this section. Although loan originators are expected to provide reliable figures in this section based on their experience, no tolerance applies to this section, which means that charges may vary without being subject to any tolerance.

III.I. *Hazard Insurance.* Loan originators shall disclose the estimated cost of the minimum amount of hazard insurance that the lender will require in this section. Although loan originators are expected to provide reliable figures in this section based on their experience, no tolerance applies to this section, which means that charges may vary without being subject to any tolerance.

III.J. *Optional Owner's Title Insurance.* Loan originators shall disclose the estimated subtotal of optional homeowner's title insurance that the borrower may choose to purchase. Although loan originators are expected to provide reliable figures in this section based on their experience, no tolerance applies to this section, which means that charges may vary without being subject to any tolerance.

IV. *Options to Pay Settlement Costs and Lower Your Interest Rate.* Loan originators shall explain the borrower's options for paying settlement costs in this section of the form by using material that is essentially the same as that contained in paragraphs A, B, C and D of this section at Appendix C along with discussing these issues with the

borrower, as needed. The loan originator must fill in the chart to demonstrate to the borrower how the borrower's chosen interest rate, monthly payments, and settlement costs compare to a loan of the same size with a lower and a higher interest rate. The completed chart serves as an example for the loan originator of how to fill out the categories. Loan originators shall use figures relevant to the borrower's transaction.

V. *Additional Loan Terms.* Loan originators shall indicate whether the mortgage loan is subject to a prepayment penalty and whether the loan has a balloon payment due at the conclusion of the loan term. If there is a prepayment penalty, the loan originator shall advise the borrower that he or she is entitled to a copy of the prepayment penalty terms upon request. For Adjustable Rate Mortgage Loans, loan originators must indicate the interest rates and adjustment terms of the adjustable rate mortgage loan.

BILLING CODE 4210–27–P

Good Faith Estimate of Settlement Costs (GFE)

This form provides a reliable estimate of the funds that will be required from you, _____, the borrower(s) to obtain a mortgage using our company as your loan originator. This GFE covers both our charges, the charges of other settlement service providers who perform services that are required by the lender to close your mortgage loan, and applicable State and local government charges and taxes due at settlement.

The following estimate is valid for ____ days [30 days or greater] from the date this form is delivered or mailed to you, if you qualify for this mortgage based on your credit rating, the appraisal, and other appropriate criteria.

THE PROPERTY: You seek to [purchase][refinance] a residential property at
(Address)_____

I. OUR SERVICES:

As a loan originator, we perform the services necessary to obtain and process your mortgage loan with our own funds or one or more funding sources. **We do not offer loans from all funding sources and we cannot guarantee the lowest price or best terms available in the market. You should compare the prices in the boxes below and shop for the loan originator, mortgage product, and settlement services that best meet your financing needs.**

II. LOAN TERMS:

For a mortgage amount of $_____, at a [fixed] interest rate of ___%, your APR will be ____%,, which includes ____% for mortgage insurance. Your loan term will be [ ] years with [ ] monthly payments. Your [initial] monthly payment for principal and interest and mortgage insurance on this loan will be $ _____. *See Section V. for loan terms related to adjustable rate mortgages, applicable prepayment penalties and balloon payments.*

III. SETTLEMENT COSTS:

If you choose a different mortgage product or you do not lock your interest rate, some of the estimates listed below may change. The following costs will have to be paid at or before loan closing:

A. Origination Charges(HUD-1 800 Series)* $_____

See Attachment A-1 listing origination charge subtotals for the lender and the broker.

B. Interest Rate Dependent Payment (200, 900)***

Until you lock in your interest rate these payments may change.

(1) (+) Borrower Payment to Lender for Lower Interest Rate: $_____

(2) (-) Lender Payment to Borrower for Higher Interest Rate: $_____

NET LOAN ORIGINATION CHARGE DUE FROM BORROWER (Sum of A and B): $_____

C. Lender Required and Selected Third Party Services (800, 1300)* $_____

These are third party services that are required and selected by the lender, these services must be disclosed to you. *See Attachment A-1 itemizing these services.*

D. Title Services and Title Insurance (1100) $_____

(1) ____ lender selected*
(2) ____ borrower selected**

E. Shoppable Lender Required Third Party Services (800, 1300)** $_____

These are third party services that are required by the lender but you may shop for (other than title services and title insurance). *See Attachment A-1 itemizing these services.*

F. Government Charges –Taxes, State and Local (1200)* $_____

Government charges due at the time of settlement assuming a closing on _____.

G. Reserves/Escrow, (if required) (1000)** $_____

H. Per Diem Interest (900) *** $_____

Per Diem Daily Rate $_____ at _____ days with an estimated settlement date of_____.

I. Hazard Insurance(900)*** $_____

J. Optional Owner's Title Insurance (1100)*** $_____

TOTAL SETTLEMENT COSTS DUE FROM BORROWER (Sum of A-J): $_____

***The charges listed in A, C, D (if selected by the lender), F, and H (daily rate) will not vary except in unforeseeable and extraordinary circumstances as prescribed by federal regulation.**

****The charges listed in D (if selected by the borrower), E, and G must not be exceeded at settlement by more than 10% absent unforeseeable and extraordinary circumstances, except when a borrower chooses to purchase a more expensive service.**

*****The charges listed in B, H, I, and J are not subject to a tolerance, therefore these charges may vary.**

IV. OPTIONS TO PAY SETTLEMENT COSTS AND LOWER YOUR INTEREST RATE

A. Cash Payment at Settlement: You may pay all or part of your required settlement costs at settlement using your available funds.

B. Borrowing Additional Funds to Pay Settlement Costs: You may be able to pay all or part of your settlement costs by borrowing the needed funds as part of your mortgage loan principal. If you chose this option, your monthly payments will increase.

C. Pay Settlement Costs Through a Higher Interest Rate:
You may be able to lower your settlement costs in exchange for paying a higher interest rate on your mortgage loan. This higher interest rate will increase your monthly payments.

D. You May Lower Your Interest Rate:
You may be able to lower the interest rate on your loan by paying additional funds at closing, commonly referred to as "discount points." The reduced interest rate will lower your monthly payments.

The following table will show you how higher and lower interest rates affect your loan and loan payments.

	GFE Terms You Selected	Higher Interest Rate	Lower Interest Rate
New Loan Balance	$100,000	$100,000	$100,000
Interest Rate	7.00%	7.25%	6.75%
Monthly Principal & Interest & PMI	$700.30	$717.18	$683.60
Credit	$100	$1,100	N.A.
Discount Points	N.A.	N.A.	$900
Change in Cash to Close From GFE Terms You Selected		$1,000 less	$1,000 more
Change in Monthly P&I from GFE Terms You Selected		$16.88 more	$16.70 less

V. ADDITIONAL LOAN TERMS

- ☐ **This mortgage IS subject to Prepayment Penalty.**
- ☐ **This mortgage IS NOT subject to Prepayment Penalty.**
- ☐ **This mortgage HAS a balloon payment of _____, which will be due at the conclusion of the loan term.**
- ☐ **This mortgage DOES NOT HAVE a balloon payment.**

Adjustable Rate Mortgage (ARM) Loans

This is an Adjustable Rate Mortgage (ARM) Loan. The initial interest rate for this ARM loan is _____. The first adjustment will occur after ____months/years and every _____months/years thereafter for a period of _____ months/years. The interest rate is based on the ____index and may increase by a margin of ____ percent over this index with each adjustment. The maximum rate increase adjustment per period is _____and the maximum interest rate that can ever apply to this loan is _____.

Attachment A–1 instructions

Attachment A–1. "Required Use" and Shoppable Third Party Providers.

A. The loan originator must itemize on this form any services that may be independently obtained by the borrower and the estimated cost (based on local market averages for the area where the property is located). The loan originator must also indicate (by checking the appropriate box) any lender-required, lender selected services, along with the estimated charge (based on local market averages for the area where the property is located), and name of the provider.

B. In reporting subtotals for mortgage broker/lender and title agent/title insurance, the loan originator must indicate the names of the service providers and the subtotals of all their charges and fees.

Attachment A-1

A. "Required Use" and Shoppable Third Party Providers

Federal regulation 3500.7(f) requires that if a lender requires the use of a particular provider of a settlement service, other than the lender's own employees, and also requires the borrower to pay any portion of the cost of such service, then the good faith estimate must: (1) state that the particular provider is required; (2) state the providers name; and (3) state the estimated charge. These services are marked as "required use."

The services marked as shoppable on this list that are also required by us to close your loan, however, unlike the "required use" services, we do not require that you use a particular provider. You may want to shop for these services on your own to find the best price and service to meet your needs. However, if you chose to use a company that is more expensive then our selection, then the excess over our estimate below is excluded from the 10% limit on the closing cost estimate given by us. The following lists the services and companies used by us and price estimates for those services.

Req. Use	Shoppable	Service	Provider	Estimate

B. Loan Origination and Title Services Subtotals

Federal regulation 3500.7(c) requires that this Attachment indicate the subtotals of the lender and mortgage broker origination charges; the subtotals of all the charges for title and settlement agent services, including any commissions for title insurance; and the subtotal for the title insurance premium.

Service	Subtotal
Mortgage Broker Charges (HUD 1 line 800)	
Lender Charges (800)	
Title Agent Charges(1101)	
Title Insurance Premium (1108)	

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11. A New Appendix F to part 3500 is added to read as follows:

Appendix F to Part 3500—Instructions for Completing Guaranteed Mortgage Package Agreement; Sample Guaranteed Mortgage Package Agreement

Instructions for Completing the Guaranteed Mortgage Package Agreement

The following are instructions for completing the guaranteed mortgage package agreement under Regulation X of the Department of Housing and Urban Development (24 CFR 3500.16(g)(1)(ix)). This form is to be used as a statement of guaranteed settlement charges, interest rate, and costs. The instructions for completion of the guaranteed mortgage package agreement are primarily for the benefit of the packager who prepares the form and need not be transmitted to the borrower(s) as an integral part of the guaranteed mortgage package agreement.

General Instructions

The loan packager preparing the guaranteed mortgage package agreement may fill in information and amounts on the form by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Under these instructions the ''form'' refers to the guaranteed mortgage package agreement form.

The guarantee includes all services provided in connection with the mortgage package, except for per diem interest, reserves/escrow, hazard insurance, and optional owner's title insurance.

Specific Instructions

Packagers shall include a paragraph substantially the same as the introductory paragraph set forth in Appendix F that explains the nature of the package and that the guaranteed mortgage package agreement remains open for a minimum of 30 days, or such greater period offered by the packager, from when the document is delivered or mailed to the borrower. Within that time period the borrower must accept the agreement and pay a minimal fee to make it binding. The packager shall fill out the property address and indicate whether the transaction is a purchase or refinance.

I. *Interest Rate Guarantee.* The packager shall specify an interest rate guarantee and Annual Percentage Rate (APR), as well as the amount of any mortgage insurance that is the APR, in this section of the form, which the borrower may accept and lock at application. While the guaranteed mortgage package agreement offer is open, if the borrower does not accept or lock, the interest rate shall be tied to an observable and verifiable index, or other appropriate data or means, and may not change except in relation to said index or measure during the time the offer is pending. If the borrower does not apply for a loan within 30 days, or such greater period offered by the packager, the offer will expire.

II. *Guaranteed Mortgage Package.* The packager shall specify a lump sum package price for covered settlement services in this section of the form. At a minimum, this amount must include all origination services, title services and title insurance, other packager or lender required third party services, all government charges, and an upfront maximum mortgage insurance premium, if applicable.

III. *Other Required Settlement Costs.* The packager shall itemize any other required settlement charges in this section of the form as permitted under § 3500.16. Any settlement costs not separately itemized in this section are presumed to be included in the Section II guarantee.

III.A. *Per Diem Interest.* The packager shall disclose the estimated cost of the minimum amount of per diem interest that the lender will require in this section. Although loan originators are expected to provide reliable figures in this section based on their experience, no tolerance applies to this section, which means that charges may vary without being subject to any tolerance.

III.B. *Reserves/Escrow.* The packager shall accurately indicate the estimated subtotal for reserves/escrow in this section on the form. This estimate shall cover all reserves/escrow deposits required by the lender for such items as taxes, hazard insurance, and mortgage insurance. The final amount required to be placed in reserves/escrow at settlement may not exceed the estimate by more than 10% (10% tolerance), absent unforeseeable and extraordinary circumstances. The packager must document any such circumstances and retain the document in accordance with § 3500.10(e) of this part.

III.C. *Hazard Insurance.* The packager shall estimate the cost of the minimum amount of hazard insurance that the lender will require in this section on the form. Although loan originators are expected to provide reliable figures in this section based on their experience, no tolerance applies to this section, which means that charges may vary without being subject to any tolerance.

IV. *Optional Owner's Title Insurance.* The packager shall estimate the cost of optional owner's title insurance that the borrower may choose to purchase. Although packagers are expected to provide reliable figures in this category, no tolerance applies to this section, which means that charges may vary without being subject to any tolerance.

V. *Options to Pay Settlement Costs and Lower Your Interest Rate.* Packagers shall explain the borrower's options for paying settlement costs in this section by using material that is essentially the same as that contained in paragraphs A, B, C and D of this section at Appendix F, along with discussing these issues with the borrower, as needed. The packager must fill in the chart to demonstrate to the borrower how the borrower's chosen interest rate, monthly payments, and settlement costs compare to a loan of the same size with lower and higher interest rates. The completed chart serves as an example for the packager of how to fill out the categories. Packagers shall use figures relevant to the borrower's transaction.

VI. *Additional Loan Terms.* Packagers shall indicate whether the mortgage loan is subject to a prepayment penalty and whether the loan has a balloon payment due at the conclusion of the loan term. If there is a prepayment penalty, the packager shall advise the borrower that he or she is entitled to a copy of the prepayment penalty terms upon request. For Adjustable Rate Mortgage Loans, packagers must indicate the interest rates and adjustment terms of the adjustable rate mortgage loan.

VII. *Guaranteed Mortgage Package Agreement.* This section must be signed by an authorized agent of the packager and the borrower to become a binding contract for the guaranteed mortgage package at the guaranteed mortgage package price. After acceptance by the borrower, non-lender packagers must ensure that the lender signs the GMPA agreeing to provide the loan included in the guaranteed mortgage package.

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Guaranteed Mortgage Package Agreement

This **GUARANTEED MORTGAGE PACKAGE AGREEMENT** commits us, _____, the **PACKAGER**, to provide you, _____, the **BORROWER(S)**, upon your acceptance and payment of a $____ fee within ____days (30 days or greater)] of the date this form is delivered or mailed to you: **(1)** a mortgage loan on the property described below at a **GUARANTEED INTEREST RATE**; **(2)** a **GUARANTEED MORTGAGE PACKAGE PRICE** for settlement services required by the lender; **(3)** a firm estimate (within 10%) of the amount of **OTHER REQUIRED SETTLEMENT COSTS** you will pay at or before settlement; and **(4)** a sum of the **TOTAL ESTIMATED SETTLEMENT COSTS** that you will be required to pay at or before settlement to obtain your mortgage.

This Agreement is subject to verification of your credit rating, final property appraisal, and other appropriate underwriting criteria. **Other providers offer similar packages, or alternative approaches to mortgage origination. You should shop to find the best packager or originator and mortgage product to meet your needs.**

THE PROPERTY: You seek to [purchase][refinance] a residential property at
(Address)_____

I. INTEREST RATE GUARANTEE

We guarantee to provide you an [initial] interest rate of ____on a [fixed rate] [adjustable] mortgage of $_____ for [ ] years with [ ] monthly payments. Your [initial] monthly payment for principal and interest and monthly mortgage insurance on this loan will be $ _____. Your APR will be ____%, which includes _____% for mortgage insurance.

This interest rate is guaranteed through settlement if you accept and sign this agreement now, and lock-in this rate by [insert date/time]. If you choose not to accept by this time, we guarantee that the interest rate will not exceed ____% [over] [under] the [prime] [index] rate for ____days [30 days or greater]. If you do not accept within this period, this offer will expire. If you accept this agreement, but elect not to lock-in the rate at the time of acceptance, we further guarantee that your interest rate will not exceed ___% [over][under] the [prime][index] rate or other standard measurement in lieu of an index when you do lock-in.

II. GUARANTEED MORTGAGE PACKAGE

We will provide you a **GUARANTEED MORTGAGE PACKAGE** for all settlement services and charges required to complete your mortgage, except those specifically set forth in Section IV below, at a **GUARANTEED MORTGAGE PACKAGE PRICE**. You will pay this **GUARANTEED PRICE** in addition to the **OTHER REQUIRED SETTLEMENT COSTS** itemized in Section III. The precise services for each transaction may vary. See Attachment A-1 for an indication of whether we anticipate pest inspection, lender's title insurance and property appraisal services being included in your guaranteed mortgage package.

This guaranteed mortgage package price may include a maximum mortgage insurance premium based upon your assertion of the value of the property and loan amount needed. The mortgage insurance premium may decrease or be removed after full underwriting.

GUARANTEED MORTGAGE PACKAGE PRICE: $_____

III. OTHER REQUIRED SETTLEMENT COSTS:

In addition to the **GUARANTEED MORTGAGE PACKAGE PRICE**, you are or may be required to pay advanced mortgage and hazard insurance premiums, and to establish escrow reserves at settlement. Some of these costs may vary depending on when your loan closes and how much insurance you are required to obtain. **No cost may be imposed on you at settlement that is not specifically itemized and estimated in this Section other than the Guaranteed Mortgage Package Price.**

A. Per Diem Interest (HUD-1 900 Series) $_____
Per Diem at $_____ @ _____ days with an estimated settlement date of_____.

B. Reserves/ Escrow, (if required) **(1000)*** $_____

C. Hazard Insurance (900) $_____

IV. OPTIONAL OWNER'S TITLE INSURANCE (1100) $_____

TOTAL ESTIMATED SETTLEMENT COSTS (SUM OF SEC. III, IV, AND V): $_____

*** Generally, pursuant to federal regulations, the amount stated in line B may not be exceeded at settlement by more than 10% absent unforeseeable and extraordinary circumstances**

V. OPTIONS TO PAY SETTLEMENT COST& LOWER YOUR INTEREST RATE

A. Cash Payment at Settlement: You may pay all or part of your required settlement costs at settlement using your available funds.

B. Borrowing Additional Funds to Pay Settlement Costs: You may be able to pay all or part of your settlement costs by borrowing the needed funds as part of your mortgage loan principal. If you chose this option, your monthly payments will increase.

C. Pay Settlement Costs Through a Higher Interest Rate:
You may be able to lower your settlement costs in exchange for paying a higher interest rate on your mortgage loan. This higher interest rate will increase your monthly payments.

D. Lower Your Interest Rate:
You may be able to lower the interest rate on your loan by paying additional funds at closing, commonly referred to as "discount points." The reduced interest rate will lower your monthly payments. The following table will show you how higher and lower interest rates affect your loan and loan payments.

	GMPA Terms You Selected	Higher Interest Rate	Lower Interest Rate
New Loan Balance	$100,000	$100,000	$100,000
Interest Rate	7.00%	7.25%	6.75%
Monthly Principal & Interest & PMI	$700.30	$717.18	$683.60
GMPA Price	$2,600	$1,600	$3,600
Change in Cash to Close From GMPA Terms You Selected		$1,000 less	$1,000 more
Change in Monthly P,I, & PMI from GMPA Terms You Selected		$16.88 more	$16.70 less

VI. ADDITIONAL LOAN TERMS

- ☐ **This mortgage IS subject to Prepayment Penalty.**
- ☐ **This mortgage IS NOT subject to Prepayment Penalty.**
- ☐ **This mortgage HAS a balloon payment of _____, which will be due on _____.**
- ☐ **This mortgage DOES NOT HAVE a balloon payment.**

Adjustable Rate Mortgage (ARM) Loans

This is an Adjustable Rate Mortgage (ARM) Loan. The initial interest rate for this ARM loan is _____. The first adjustment will occur after ____months/years and every _____months/years thereafter for a period of _____ months/years. The interest rate is based on the ____index and may increase by a margin of ____ percent over this index with each adjustment. The maximum rate increase adjustment per period is _____and the maximum interest rate that can ever apply to this loan is _____.

VII. Guaranteed Mortgage Package Agreement:

We are providing this GMPA to you at no cost. If you agree to seek a mortgage loan using our services within 30 days, by signing, dating, and returning this GMPA to us on or before ____, along with a $___ application fee, we will be contractually bound to the terms of this GMPA provided that you qualify for this mortgage based on your credit rating, the appraisal, and other appropriate criteria.

Signature of Authorized Agent Date Signature of Lender Date

Signature(s) of Borrower(s) Date

Attachment A–1 instructions

Attachment A–1. The packager shall indicate in the chart (either yes or no) whether specific services are anticipated to be included in the guaranteed mortgage package price, such as the pest inspection, lender's title insurance, appraisal, and credit report.

Attachment A-1

This list indicates whether we anticipate specific services being included in your guaranteed mortgage package. Upon request, you are entitled to receive a copy of the reports generated by any of the services listed below that are included in your package.

Service	Anticipated (Y/N)
Pest Inspection (HUD-1 line 1302)	
Lender's Title Insurance (HUD-1 line 1109)	
Property Appraisal (HUD-1 line 803)	
Credit Report	

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Dated: July 5, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix to FR–4727 Proposed Rule Regulatory Flexibility Analysis

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

The following Regulatory Flexibility Analysis is Chapter 5 of the rule's Economic Impact Analysis, which is available for public inspection.

Summary of the Rule's Benefits and Impacts on Small Businesses

The proposed RESPA rule offers a dual approach to problems in the settlement market: A new, simplified GFE combined with tolerances on final settlement costs and a new method for reporting wholesale lender payments in broker transactions; and a guaranteed cost approach based on packaging of settlement services. This chapter provides a summary of benefits, costs, transfers, efficiencies, and market impacts of these two approaches, highlighting the effects on small businesses. Section I discusses the new GFE approach while Section II discusses the guaranteed cost approach, or packaging. The chapter also summarizes alternative approaches that HUD considered that potentially impacted small businesses. The format in this chapter is to list the major findings; additional details about the new GFE approach and packaging are available in Chapters 3 and 4, respectively.

I. New GFE Approach

The main benefits, costs, transfers, and market impacts of the new GFE approach are outlined below, along with the specific impacts on small businesses. Since most brokers and settlement service providers are small businesses, the main impacts of the new GFE approach on these entities are highlighted below in subsections I.C, I.D and I.F.

A. Shopping Benefits

The new GFE approach will improve consumer shopping for mortgages, which will result in better mortgage products at lower prices for consumers.

- The new GFE format in the proposed rule simplifies the process of originating mortgages by consolidating costs into a few major cost categories. This is a substantial improvement over today's GFE, which contains a long list of individual charges that encourages fee proliferation and junk fees, and can often overwhelm and confuse consumers.
- The new GFE contains a statement that clarifies the role that the originator plays in the loan process. It states, for example, that the originator does not distribute the loan products of all funding sources, that the originator does not guarantee the best loan terms, and that the consumer should shop. This will put all borrowers on notice that they should protect their interests by shopping.
- The new GFE also makes cost estimates more certain, by requiring that loan originators adhere to amounts reported on the GFE for major cost categories (such as origination fees), and on additional cost categories give estimates subject to a 10% upper limit, or tolerance. This will reduce the all too frequent problem of borrowers being surprised by additional costs at settlement.
- The new GFE will better inform consumers about their financing choices by requiring that lenders explain the different interest rate and closing cost options available to consumers. For example, consumers will fully understand the trade-offs between reducing their closing costs and increasing the interest rate on the mortgage.
- Altogether, the simplicity and certainty offered by the new GFE should improve comparison shopping for mortgage loans, reduce interest rates and settlement prices for borrowers, and eliminate surprises at settlement. There will be less of the sub-optimal consumer shopping that often characterizes today's mortgage market. In addition, originators will be less able to take advantage of uninformed shoppers.

B. Summary of Estimated Benefits, Costs, Transfers, and Efficiencies

Chapter 3 provided estimates of the magnitude of the benefits, costs, transfers, and efficiencies. Transfers totaled $6.3 billion to borrowers, with $4.5 billion coming from originators and $1.8 billion from third party settlement service providers. In addition to these transfers, there are efficiency gains: Borrowers realize $826 million in efficiency gains from less time spent shopping; and loan originators and third party settlement service providers experience $1.630 billion in efficiency gains, some or all of which have the potential to be passed through to borrowers through competition. Costs to originators rise by approximately $250–$275 million. These estimates are explained further below. While they are based on specific assumptions (see Chapter 3), they provide a sense of the overall effects of the new GFE approach.

- Under one set of assumptions, Chapter 3 estimates that $7.5 billion of the $15 billion in total yield premium payments (YSPs) is not passed through to borrowers to reduce closing costs. If the proposed rule results in half of this $7.5 billion being recaptured by borrowers, then the annual impact would be $3.75 billion. While this figure will vary depending on specific assumptions, it provides a sense of how large the effects of the proposed rule could be on the return of YSPs to borrowers as reduced closing costs.
- Direct origination fees are estimated to be $15 billion (which when added to the $15 billion in YSPs results in total originator compensation of $30 billion). In addition to the $3.75 billion in YSPs recaptured by borrowers, it is also assumed that improved shopping enables borrowers to capture five percent (or $0.75 billion) of originators' direct origination fees of $15 billion.
- Chapter 3 estimates that $18 billion in third-party fees would be subject to increased price pressure as a result of the imposition of tolerances and expanded shopping by originators. While it is difficult to estimate how much tolerances and expanded originator shopping will reduce the $18 billion, this figure provides a base on which this effect will be felt. The estimates reported below assume that third-party fees would fall by 10 percent, or $1.8 billion.
- It was estimated that borrowers would save $6.3 billion in annual settlement

charges.[1] This $6.3 billion represents transfers to borrowers from higher priced producers, with $4.5 billion coming from originators[2] and $1.8 billion from third party settlement service providers. While these figures will vary depending on specific assumptions, it provides a sense of how large the effects of the proposed rule could be on settlement charges to borrowers.

• In addition to the transfers, there are several efficiencies associated with the GFE. Borrowers realize $826 million savings in time spent shopping for loans and third party services. Loan originators save $1.280 billion in time spent with shoppers, in efforts spent seeking out vulnerable borrowers, and from the substitution of more efficient for less efficient originators. Third party settlement service providers save $350 million in time spent with shoppers and from the substitution of more efficient for less efficient third party settlement service providers. Some or all of the $1.280 billion and $350 million in efficiency gains have the potential to be passed through to borrowers through competition.

• Costs to originators rise by $226 million if it takes 10 extra minutes to handle the forms and by $26 to $52 million to make third party arrangements in response to tolerances. (See ''Costs and other Impacts'' below.)

• As discussed throughout this chapter, the benefit, cost, transfer, and efficiency estimates are based on specific assumptions. The estimates provide a sense of the overall net benefits of the proposed new GFE approach to consumers. The rest of this summary highlights the main impacts of the new GFE approach.

C. New Treatment of Wholesale Lender Payments and Impacts on Brokers

An important feature of the new GFE approach is that it addresses the problem of lender payments to mortgage brokers.

• The proposed rule ensures that in brokered transactions, borrowers receive the full benefit of the higher price paid by wholesale lenders for a loan with an above-par interest rate, that is, yield spread premiums will go directly to the borrower. On both the GFE and HUD–1, the portion of any wholesale lender payments that arise because a loan has an above-par interest rate is passed through directly to borrowers as a credit against other costs. Thus, there is assurance that borrowers who take on an above-par loan receive funds to offset their settlement costs.

• Similarly, the proposed rule ensures that in brokered transactions, consumers who choose to pay discount points receive the full market benefit in terms of lower mortgage interest rates.

• Under these new rules, brokers must report the total origination fees they receive on the GFE and the HUD–1—rather than their origination fees *net* of any yield spread premium they receive. Thus, the new GFE clarifies what brokers are receiving for loan origination.

• Most brokers are small businesses. The above changes in the method for reporting wholesale lender payments on the GFE and HUD–1 will reduce the incomes of those brokers who have been overcharging consumers by receiving a combination of origination fees and yield spread premium payments that is greater than that suggested by competitive markets. The new GFE will clearly indicate both (a) the broker's total origination fee received and (b) the net upfront origination fee to the borrower, after reduction for any yield spread premium that the wholesale lender pays the borrower. Consumers will have full information about broker fees, which will allow them to comparison shop and pay lower fees, compared with the situation they face in today's market.

• As explained in the proposed rule, it is not practical to implement such a system for lenders, which means that lenders can continue to report their origination fees on a net basis if they so choose.[3] However, HUD has designed the new GFE form so that it reduces any anti-competitive effects between brokers and lenders. For purposes of comparing lender and broker offers, the new GFE focuses the borrower's attention on the right number, which is the subtotal after reducing total origination fees by any lender payment to the borrower (i.e. yield spread premium). This should reduce any anti-competitive impacts of the proposed rule on small businesses.

• Furthermore, it is anticipated that market competition will increase the likelihood that yield spread premium payments will be passed through to borrowers throughout the market, in lender (i.e., non-broker) as well as broker transactions. The information that consumers gain from broker transactions concerning the money back on premium loans should make consumers act competitively with respect to premiums on similar loans from non-brokers.

• Brokers as a group will remain highly competitive actors in the mortgage market. Chapter II discusses the factors that will continue to keep brokers competitive with other lenders. As noted above, HUD has also designed the GFE to lessen any anti-competitive effects from the different reporting requirements of lenders and brokers on the new GFE. Therefore, there is no evidence to suggest that there would be any major anti-competitive impact on the broker industry as a whole from the new GFE provisions in the proposed rule.

• Rather, the main impact on brokers (both small and large) of the proposed new treatment of payments by wholesale lenders would be on those brokers (as well as other originators) who have been overcharging uninformed consumers, through the combination of high origination fees and yield spread premiums. As noted above, it is anticipated that market competition, under this new GFE approach, will have a similar impact on those lenders (non-brokers) who have been overcharging consumers through a combination of high yield spread premiums and origination costs.

• As noted above, according to some estimates $7.5 billion in YSPs is not passed through to borrowers to reduce closing costs. While this figure will vary depending on specific assumptions, it provides a sense of how large the effects of the proposed rule could be on the return of YSPs to borrowers as reduced closing costs.

D. Lower Settlement Service Prices

In addition to reducing originator fees, the tighter tolerances of the new GFE approach would result in lower prices for third party settlement services. Settlement service providers who are small businesses would be impacted by any reduction in settlement service prices arising from the tighter tolerances on settlement fees.

• The imposition of tolerances on fees will encourage originators to seek discounts and cut settlement service prices. The proposed rule clarifies that loan originators can make arrangements with their third party settlement service providers (appraisers, settlement service agents, etc.) to lower prices for their customers (i.e., borrowers), provided these prices or any fees on the GFE are not ''marked up'' or ''up charged.''

• Section V of Chapter 3 examines the magnitude of third-party fees that would be subject to increased price pressure as a result of the imposition of tolerances and expanded shopping by the originator. As noted above, $18 billion in third party fees would fall into this category. While it is difficult to estimate how much tolerances and expanded originator shopping will reduce the $18 billion, this figure provides a base on which this effect will be felt. The estimates reported above under ''Summary of Estimated Impacts'' assumed that third-party revenues would fall by $1.8 billion, or 10 percent.

• It is estimated that small settlement service providers would account for $1.3 billion of the $1.8 billion decline in third party revenues. But as discussed in Chapter 3, this estimate is subject to variation.

E. Costs and Other Impacts

Chapter 3 identifies several factors might impact the costs of handling the new GFE form. As noted below, many of these factors tend to offset each other with end result being that annual additional costs appear to be small.

• There are some direct costs to originators from complying with the GFE portion of the proposed rule. These do not appear to be very large. While the new GFE format requires less itemization than today's GFE, the HUD–1, with its detailed itemization, remains essentially the same. Originators and closing agents will have to expend some minimal effort in explaining to consumers the cross walk between the new streamlined GFE and the more detailed HUD–1. There is a new page of the GFE showing interest rate

[1] As explained in Section IV.C of Chapter 3, the $6.3 billion represents about 13 percent of the baseline settlement costs, which include origination fees and selected third party costs (appraisal, credit report, tax service and flood certificate and title insurance and settlement agent charges). Survey, pest inspection, and mortgage insurance are not included, as they are not required on all loans. Thus, the $6.3 billion may be a conservative figure. This assumes, of course, that all the other assumptions underlying this scenario are correct.

[2] The $3.75 billion in YSPs recaptured by borrowers plus the $0.75 billion in reduced direct origination fees give $4.5 billion in transfers to borrowers from originators.

[3] This also includes those brokers who have wholesale lines of credit.

alternatives, which should not impose much additional costs, given that most originators do that in some form today. Annual costs to originators rise by $226 million if it takes 10 extra minutes to handle the new GFE form. Chapter 3 also estimates that first-year startup costs could range from $55–$95 million.

• There will be some costs to originators from the need for additional preliminary underwriting in order to generate new GFEs. While this underwriting is already occurring for full applications today, it is expected that some borrowers under the new GFE will get multiple applications and use them to shop. However, it is difficult to estimate how many additional GFEs and preliminary underwritings will result under the new GFE scheme. In addition, as discussed in Chapter 3, the number of applicants going to full underwriting could decline under the proposed rule.

• The imposition of zero and 10 percent tolerances on fees will require lenders to take some actions that will increase their costs. For example, arrangements will have to be made with third party settlement service providers, in order for the originator to come up with estimates that can be delivered within the 10 percent tolerance. As noted above, these are estimated to range from $26 to $52 million.

F. Small Business Impacts—A Summary and Alternatives Considered

Chapter 3 estimates that $3.5 billion of the $6.3 billion in transfers would come from small businesses. The above summary bullets highlight the mechanisms in which this will happen. Improved consumer shopping among originators and more aggressive competition by originators for settlement services will lead to price reductions. Originators (both small and large) and settlement service providers (both small and large) that have been charging high prices will experience reductions in their revenues. Of the $3.5 billion impact on small businesses, it is estimated the $2.2 billion will come from small originators and $1.3 billion, from small settlement service providers.

Market impacts on different types of businesses are discussed throughout Chapter 3, as well as in the summary bullets under C and D above. Chapter 3 also discussed alternative policies that HUD considered when developing the rule. Examples of alternatives that would impact small businesses include:

• One alternative considered was to place the interest rate dependent payment at the bottom of the form rather than directly after the origination charge. This was rejected since an unsophisticated borrower might misinterpret the broker's higher origination charge (relative to a lender who can net the yield spread premium out of the origination charge rather than list it separately as a lender payment to the borrower) as indicating that the broker's loan is more costly.

• The Department considered placing the division of the origination charge into broker and lender portions on the front page of the GFE but rejected that idea since the information was not useful in bottom line comparison shopping. Loans with identical origination charges will now have the same numbers presented in the origination charge whether originated by a broker or lender.

• The Department considered having zero tolerance on both the lender and broker components of the origination charge instead of zero tolerance on the total. Zero tolerance on the components would have given brokers less flexibility in switching lenders, even if the total of the lender and broker fees would remain the same. The method selected makes it easier for brokers to switch lenders, so long as the total origination charge does not rise.

• The Department considered having different statements of the services of the originator. The purpose of this section of the GFE is to alert borrowers to shop in order to protect their interests. Different statements could favor brokers over lenders, or vice versa. The Department adopted the idea that every originator would have to deliver the same message, so that every borrower gets the same warning and no originator is at a disadvantage in delivering the message.

II. Guaranteed Cost Packaging or Packaging

The main benefits, costs, transfers, and market impacts of the guaranteed cost or packaging are outlined below, along with the specific impacts on small businesses. Since most brokers and settlement service providers are small businesses, the main impacts of packaging on these entities are highlighted below in subsection II.F.

A. Overview of Packaging Benefits

First, guaranteed packaging will improve and increase borrower shopping for mortgages. Basically, guaranteed packaging reduces the loan offer to:a settlement package price, an interest rate, an APR, and a PMI premium rate. The package price and the PMI premium has zero tolerance, and the interest rate is guaranteed if locked (otherwise the rate varies with a market index). In addition, the offer is free and, if agreed upon by the borrower, the offer becomes a contract that is enforceable. These are all advantages over today's process of shopping for mortgages. Economic efficiencies result from easier and less time consuming shopping under packaging. Borrowers are better informed, shop better, and reach better deals.

Second, the guaranteed packing approach would remove regulatory barriers that are today preventing market competition from reducing settlement prices. Under current law, a providers' efforts to enter into volume arrangements with settlement service firms may be regarded as illegal and restrictions against mark-ups of third party costs may impede the packaging of services. Under HUD's proposed rule, packagers will be able to enter into cost-reducing, volume-discount arrangements, and competition among packagers will pass these lower costs through to borrowers at mortgage settlement.

B. Summary of Estimated Benefits, Costs, Transfers, and Efficiencies

Chapter 4 presents estimates of the magnitude of the benefits, costs, transfers, and efficiencies associated with packaging. Transfers total $10.3 billion to borrowers, with $6.7 billion coming from originators and $3.6 billion from third party settlement service providers. In addition to these transfers, there are efficiency gains: borrowers realize $1.652 billion in efficiencies from less time spent shopping and loan originators and third party settlement service providers realize $3.410 in efficiency gains, some or all of which have the potential to be passed through to borrowers through competition. These estimates are explained further below. While they are based on specific assumptions (see Chapter 4), they provide a sense of the overall effects of packaging.

While these benefits of packaging are basically similar to the benefits of the new Good Faith Estimate approach discussed in Section I, it is anticipated that packaging will improve shopping and lower settlement costs to an even greater extent than the GFE approach. Above, it was estimated that borrowers could save $6.3 billion in annual settlement costs under the new GFE approach. It is anticipated that a system based on packaging alone would lead to even greater savings for borrowers, as transfers from firms to borrowers will rise by $4 billion for a total of $10.3 billion. Originators contribute $6.7 billion of this and third party settlement service providers, $3.6 billion. This benefit to consumers comes from further reductions in overcharges that competition passes on to borrowers. Under this scenario, the final savings to the borrower would depend on how the market settles down between the two methods of loan origination—the new GFE approach and packaging. If it is half and half, borrower gains are slightly over $8 billion.

In addition to the transfers, there are several efficiencies associated with packaging (see the summary in Section VII in Chapter 4). Borrowers realize $1.652 billion savings in time spent shopping for loans and third party services. Loan originators save $2.710 billion in time spent with shoppers, in efforts spent seeking out vulnerable borrowers, and from the substitution of more efficient for less efficient originators. Third party settlement service providers save $700 million in time spent with shoppers and from the substitution of more efficient for less efficient third party settlement service providers. Some or all of the $2.710 billion and $700 million in efficiency gains have the potential to be passed through to borrowers through competition.

The simplification and other advantages of the new GMPA will lead to lower costs than under the new GFE. It is assumed that costs under the GMPA will be the same as today's GFE. As discussed in Chapter 4, one area of uncertainty about packaging and the new GMPA concerns the index that is used to ensure that changes in the interest (note) rate reflect changes in the market. Until the exact mechanism is selected, it is difficult to determine the effect of the index on packaging.

Concerns have been expressed about the impacts of the packaging approach on small lenders and small service providers. Chapter 4 estimated that small businesses (i.e., small originators and small service providers) would account for $5.9 billion of the $10.3 billion in transfers. The effects on small businesses are discussed below in II.F.

C. Shopping Benefits

Packaging offers numerous shopping advantages for consumers, compared to today's process of shopping for mortgages. Under packaging, borrowers are better informed and better able to comparison shop.

• Guaranteed packaging will improve and increase borrower shopping for mortgages. Basically, guaranteed packaging reduces the loan offer to two numbers (a settlement package price and an interest rate), has zero tolerance on the package price, and guarantees the interest rate if locked (otherwise the rate varies with a market index). In addition, the offer is free and, if agreed upon by the borrower, the offer becomes a contract that is enforceable. These are all advantages over today's process of shopping for mortgages, as well as over the Good Faith Estimate approach outlined in Chapter 3.

• The simplified loan offer under packaging does away with the proliferation of fees, including junk fees that often characterizes today's mortgage offers.

• The packaging agreement eliminates the separate reporting of the premium or discount associated with brokered loans. This is done to facilitate competition and comparison shopping.

• Economic efficiencies result from easier and less time consuming shopping under packaging. Borrowers are better informed, shop better, and reach better deals.

• In this case, the main transfers will be from originators who are charging above market prices to borrowers who are more informed and better able to comparison shop (see the $6.7 billion estimate reported above).

D. Lower Settlement Service Prices

The packaging approach will result in even lower prices for third party settlement services than estimated above for the new GFE approach.

• The Section 8 safe harbor will allow greatest protection to entities within the package from charges of illegal referral fees, kickbacks, and unearned fees. This will free up packagers to pursue lower prices for third party services in their package without concern that the technique used could be a Section 8 violation. Competition is substituted for regulation.

• Thus, packaging will result in lower prices paid for settlement services, as packagers aggressively seek discounts in third-party service prices. A better shopper (the packager) is substituted for the borrower as the searcher for third party settlement services.

• In addition, there are several efficiencies associated with packaging that could lead to lower costs. Under packaging, originators may deal with one packager, rather than a whole array of third party providers and the packager, who specializes in this activity, may be more efficient than the originator.

• Given the likelihood that there will be competition among a number of packagers, the lower third party service prices will be passed through to borrowers as lower costs for closing a loan. In this case, the main transfers will be from settlement service providers to borrowers (see the $3.6 billion estimate reported above).

E. Impact on Business Operations and Market Structure

The proposed RESPA rule offers a dual approach to settlement market problems—(1) a new, simplified GFE combining tolerances on final settlement costs and a new method for reporting wholesale lender payments; and (2) a guaranteed cost approach based on packaging. Consumers and originators can use either approach, which has the advantage of allowing the market determine the best approach under a given set of circumstances. While there are reasons to expect originators to move toward the packaging approach, it is difficult to estimate the share of the market that will ultimately fall under packaging, as well as the timing of the move toward packaging.

• An uncertainty with respect to the implementation of packaging concerns the interest rate index that determines changes in mortgage rates for borrowers who are shopping (before they sign the guaranteed packaging offer) and for borrowers who choose to ''float'' rather than ''lock-in'' their interest rate (at the time they sign the offer). Packaging depends on lenders finding an acceptable interest rate index, or some other mechanism for ensuring that any changes in the interest rate reflect overall market changes. As noted below, there will likely be some costs associated with lenders' guaranteeing that interest rates move only with market conditions, depending on the indexing technique chosen.

• As explained in this chapter, packaging could take several forms—for example, originators could develop their own packages or specialized firms could develop packages, or components of packages, which they would then sell them to originators. The section on small business below highlights several additional market impacts of packaging.

F. Compliance and Other Costs

The simplification and other advantages of the new Guaranteed Mortgage Packaging Agreement (GMPA) will lead to lower costs than under the new GFE.

• The GMPA and HUD–1 with packaging will have substantially fewer numbers and less detail than the current GFE and HUD–1. Only six numbers are required on the first page of the Guaranteed Mortgage Packaging Agreement. This will lead to a more efficient origination process since less time will be spent by the originator and the borrower in deciphering the proliferation of fees that now characterizes the GFE and HUD–1.

• Packaging eliminates the reporting of individual fees within the package and in so doing permits, in effect, average cost pricing. This reduces costs because firms do not have to keep up with an itemized, customized cost for each borrower.

• As mentioned above, there could be some additional costs associated with lenders having to use an as yet undetermined index in order to guarantee market interest rates (a) during the time that the consumer is shopping (after the packager has made the offer) and (b) during the time between the offer being accepted and final closing for those borrowers who choose to ''float'' rather than ''lock-in'' their interest rate. The proposed rule asks for comments on how the interest rate index could be determined.

• Originators make a free offer that is also guaranteed. This will require additional information gathering and preliminary underwriting to the extent that borrowers seek multiple offers, beyond what they do in today's market. There could also develop some degree of uncertainty and costs associated with originator's making guaranteed offers based on preliminary underwriting, particularly for those borrowers who typically require extensive underwriting. As explained in Chapter 4, however, this would simply result in the originator making a new loan offer or sending their customer elsewhere.

• There will be some costs associated with the arrangements that packagers have to make with third party settlement service providers, in order for the packager to ensure that there would be no change in the pre-arranged third party prices. But as discussed in Chapter 4, other efficiencies resulting from packagers dealing with third party providers are expected to offset these costs.

G. Summary of Small Business Impacts and Alternatives Considered

As noted above, concern has been expressed about the market impacts of packaging, particularly as they relate to small businesses. The main findings regarding the effects of packaging on small businesses are as follows:

• The nature of locally-provided, third party services (such as appraisal, survey, pest inspection, closing agents) could remain the same under packaging—the main change will involve who purchases these services. Packagers will be the new purchasers of these services, and third party service prices will be lower.

• Under packaging, those third party service providers (both large and small) who are currently charging high prices for their settlement services would experience reductions in the prices of their services. To the extent that third party settlement service providers happen to be small businesses, they would, of course, experience a reduction in their revenues. Of the $3.6 billion in price reductions for third party services, the small business share is $2.5 billion.

• It is estimated that small businesses (i.e., small originators and small service providers) would account for $5.9 billion of the $10.3 billion in transfers to consumers noted above—$3.4 billion of this would come from small originators and $2.5 billion would come from small settlement service providers. As in the case with the new GFE approach, firms suffering losers under packaging are originators and third party providers who are currently charging high prices for their services.

• Still, there is no strong reason to expect that locally-based small businesses could not continue providing third party settlement services under packaging, albeit at possibly lower prices and revenues, as noted above. Services that are local in nature (such as appraisals) will continue to be demanded under the packaging approach. Services that are national in nature and characterized by economies of scale (such as credit reporting)

are already being conducted by larger firms on a national scale.

• There has also been a concern that small lenders would be placed at a disadvantage under packaging because of the ''bulk'' buying power of large lenders. While this may be the case, it does not have to be. First, there is no evidence of this effect today where large lenders can purchase services such as appraisals on a ''bulk'' basis. Second, if specialized packaging firms develop, it seems reasonable to expect them to offer their packages to small lenders as well as large lenders. It is difficult to reach firm conclusions about the magnitude of the impact on small lenders.

• Brokers, most of whom are small businesses, could pursue a number of avenues under packaging. They could develop their own package, purchase one from specialized firms, or use the package offered by the wholesale lender they are dealing with. Under packaging, brokers will continue their main function of reaching the consumer, just as they do today. This customer outreach function is not going to go away with packaging.

• Furthermore, Chapter 2 of this Economic Analysis reports that technology improvements and other recent changes in the mortgage market have probably increased the competitive position of brokers relative to other originators. These underlying strengths of brokers are also not going to disappear with packaging.

Chapter 4 discusses alternative policies that were considered with respect to packaging. The Department considered writing this proposed rule as if only lenders could package. This idea was rejected in favor of allowing anyone to package so long as the package contains a loan. This further affords smaller firms the opportunity to offer their services and benefit from a packaging environment.

Under packaging, there is no separate treatment of yield spread premiums or discounts and no special rules for brokers. Thus, all originators present their loans the same way and all the market's competitive forces are applied to everything in the package regardless of the type of originator. No broker, or any other kind of originator for that matter, is at a competitive disadvantage.

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2002–03 Season; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI30

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2002–03 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposes special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2002–03 migratory bird hunting season.

DATES: We will accept all comments on the proposed regulations that are postmarked or received in our office by August 8, 2002.

ADDRESSES: Send your comments on these proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, 1849 C Street, NW, Washington, DC 20240 or fax comments to (703)358–2272. All comments received will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Tina Chouinard, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1714).

SUPPLEMENTARY INFORMATION: In the March 19, 2002, **Federal Register** (67 FR 12501), we requested proposals from Indian Tribes wishing to establish special migratory bird hunting regulations for the 2002–03 hunting season, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). In this supplemental proposed rule, we propose special migratory bird hunting regulations for 29 Indian tribes, based on the input we received in response to the March 19, 2002, proposed rule. As described in that rule, the promulgation of annual migratory bird hunting regulations involves a series of rulemaking actions each year. This proposed rule is part of that series.

We developed the guidelines for establishing special migratory bird hunting regulations for Indian tribes in response to tribal requests for recognition of their reserved hunting rights and, for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of the usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Treaty). The guidelines apply to those tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes wish to establish special hunting regulations for tribal members on ceded lands.

Because of past questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, we provide the following clarification. We routinely provide copies of **Federal Register** publications pertaining to migratory bird management to all State Directors, tribes, and other interested parties. It is the responsibility of the States, tribes, and others to notify us of any concern regarding any feature(s) of any regulations. When we receive such notification, we will initiate consultation.

Our guidelines provide for the continued harvest of waterfowl and other migratory game birds by tribal members on reservations where such harvest has been a customary practice. We do not oppose this harvest, provided it does not take place during the closed season defined by the Treaty, and does not adversely affect the status of the migratory bird resource.

Before developing the guidelines, we reviewed available information on the current status of migratory bird populations; reviewed the current status of migratory bird hunting on Federal Indian reservations; and evaluated the potential impact of such guidelines on migratory birds. We concluded that the impact of migratory bird harvest by tribal members hunting on their reservations is minimal.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for nontribal members on dates that are within Federal frameworks, but which are different from those established by the State(s) where the reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make this unlikely, however, because tribal proposals must include:

(a) Harvest anticipated under the requested regulations;

(b) Methods that will be employed to measure or monitor harvest (such as bag checks, mail questionnaires, *etc.*);

(c) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

We may modify or establish regulations experimentally, after evaluation and confirmation of harvest information obtained by the tribes.

We believe the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, we note that they have been employed successfully since 1985. We believe they have been tested adequately and, therefore, made them final beginning with the 1988–89 hunting season. We should stress here, however, that use of the guidelines is not mandatory and no action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Population Status

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds.

May Breeding Waterfowl and Habitat Survey

The May Breeding Waterfowl and Habitat Survey was delayed and extended due to the unusually cold and late spring and only recently completed. Thus, this information is preliminary and population estimates are not yet available. Habitat conditions in May for breeding waterfowl in Canada and the U.S. are generally worse this year than they were last year, due primarily to lack of water in the prairies and cold spring temperatures in the East.

Most survey areas started this spring with a water deficit left over from the winter. Spring rains helped recharge wetlands in most of the northeast, but conditions remained very dry in the west. Conditions in the southern Saskatchewan produced prairies that were the driest in over 30 years. Much of southern Manitoba also was dry this year, and drought continued in most of Alberta. There were fewer wetlands available to birds, because most temporary and seasonal wetlands were dry. In the Dakotas, Montana, and southern Saskatchewan, birds were forced to crowd onto the remaining semi-permanent and permanent ponds. A bright spot in the prairies was the Dakotas, where permanent wetlands remained in good condition from the wet period of 1993–2001. Preliminary reports and survey results suggest that many ducks over-flew these dry areas in the prairies to the boreal forest, where water levels are more stable.

A further negative impact on nesting waterfowl this year was the cold spring temperatures. Winter-like conditions hit the entire surveyed area in early May, and snowstorms and cold temperatures caused birds to halt migration. Migration was delayed for several weeks, as many birds waited for temperatures to warm up and ice to thaw. Snow and cold may have caused some nest loss in the prairies. In many of the northern survey areas, survey biologists reported that this was the latest spring ice breakup in memory. Breakup was so late in northern Ontario, northern Quebec, and Labrador that survey biologists suspected that it came too late for waterfowl to breed in these northeastern areas. However, spring breakup was not too late to prevent breeding in the northwestern areas, from the northern portions of the prairie provinces to Alaska. Conditions there were generally good, but the cold temperatures likely had a negative impact on early-nesting species such as mallards, green-winged teal, and pintails. The only region where habitat conditions for breeding waterfowl are better this year than they were last year is Alaska, where conditions went from poor/fair in 2001 to fair/good in 2002. This improvement is a result of the warmer post-thaw temperatures this year than last year. However, because the ice-melt was very rapid when it finally happened, nests may have been flooded out in parts of Alaska and Labrador.

Since the surveys were flown, water conditions have improved in Montana, the western Dakotas, southern Saskatchewan, and southern Alberta. These areas have received from several inches to a foot or more of rain and/or snow. However, this amount of moisture in such a short period of time has resulted in a lot of flooding, and most biologists think that the rain was probably too late to help nesting waterfowl this year. These improved conditions may help some broods, and may lead to improved water conditions next year.

In summary, waterfowl production is expected to be below normal in most southwestern survey areas, except for the Dakotas, where conditions are better. Production in the northwestern survey areas is harder to assess, because habitat conditions are good but cold spring temperatures likely will have a negative impact on early-nesting species. In the eastern survey areas, conditions ranged from good to excellent in the southern regions, to poor in the north where ice-thaw came too late.

Status of Teal

Preliminary estimates for blue-winged teal from surveyed areas total 4.2 million blue-winged teal, which is below the 4.7 million needed to trigger the 16-day teal season in the Central and Mississippi Flyways.

The 2001–02 season was the fourth consecutive year of an extended (16 days vs. 9 days) September teal season in the Central and Mississippi Flyways. The Atlantic Flyway also had a 9-day teal season. Harvest estimates are not available at this time.

Sandhill Cranes

The Mid-Continent Population of Sandhill Cranes has generally stabilized at comparatively high levels, following increases in the 1970s. The Central Platte River Valley, Nebraska, spring index for 2002, uncorrected for visibility, was 313,600 cranes. The photo-corrected 3-year average for 1999–2001 was 396,167, which is within the established population-objective range of 343,000–465,000 cranes. All Central Flyway States, except Nebraska, allowed crane hunting in portions of their respective States in 2001–02. About 8,650 hunters participated in these seasons, which was 24 percent higher than the number participating in the previous year. An estimated 13,964 cranes were harvested in the Central Flyway during the 2001–02 seasons, which was similar to the previous year's estimate. Retrieved harvests in the Pacific Flyway, Canada, and Mexico were estimated to be about 12,381 cranes for the 2001–02 period. The total North American sport harvest, including crippling losses, was estimated at 28,821, about 13 percent lower than the previous year's estimate. The long-term trend analysis for the Mid-Continent Population during 1982–2000 indicates that harvests have been increasing at a higher rate than the trend in population growth over the same period.

The fall 2001 pre-migration survey estimate for the Rocky Mountain Population of sandhill cranes was 16,559, which was similar to the previous year's estimate of 19,990. Limited special seasons were held during 2001 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulting in a record high harvest of 898 cranes.

Woodcock

Singing-ground and wing-collection surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). Singing-ground Survey data for 2002 indicate

that the number of displaying woodcock in the Eastern Region was 1.3 percent lower than levels observed in 2001; however, this decrease was not significant (P>0.10). In the Central Region, there was a 7.9 percent decrease in the number of woodcock heard displaying; however, this change was also not significant. Trends from the Singing-ground Survey during 1992–2002 were −2.1 and −1.5 percent change per year for the Eastern and Central regions, respectively (P<0.01). There were long-term (1968–02) declines (P<0.01) of 2.3 percent per year in the Eastern Region and 1.6 percent per year in the Central Region.

The 2001 recruitment index for the Eastern Region (1.4 immatures per adult female) was the same as the 2000 index, but was 18 percent below the long-term regional average. The recruitment index for the Central Region (1.3 immatures per adult females) was slightly higher than the 2000 index of 1.2 immatures per female, but was 23 percent below the long-term regional average. The index of daily hunting success in the Eastern Region was 2.0 woodcock per successful hunt in both 2000 and 2001, and seasonal hunting success was 8.7 woodcock per successful hunter in both years. In the Central Region, the daily success index increased slightly from 2.0 woodcock per successful hunt in 2000 to 2.1 in 2001; but seasonal hunting success decreased from 10.7 to 10.5 woodcock per successful hunter.

Band-Tailed Pigeons and Doves

A significant decline in the Coastal population of band-tailed pigeons occurred during 1968–2001, as indicated by the Breeding Bird Survey (BBS); however, no trend was noted over the most recent 10 years. Additionally, mineral-site counts at 10 selected sites in Oregon indicate a general increase over the most recent 10 years. Call-count surveys conducted in Washington showed a significant increase during 1997–01 and a non-significant increase during 1975–01. The Interior band-tailed pigeon population is stable with no trend indicated by the BBS over the short- or long-term periods.

Analyses of Mourning Dove Call-count Survey data indicated significant declines in doves heard over both the most recent 10 years and the entire 37 years of the survey in the Central and Western Management Units. In the Eastern Unit, a significant decline was detected over 37 years but no significant trend was indicated over the most recent 10 years. In contrast, a significant increase was found for doves seen over the 10-year period, in the Eastern Unit, while no trends were found in the Central and Western Units. Over the 37-year period, no trend was found for doves seen in the Eastern and Central Units, while a decline was indicated for the Western Unit. A project is under way to develop mourning dove population models for each unit to provide guidance for improving our decision-making process with respect to harvest management. Additionally, a small-scale banding study is being planned to obtain additional information.

The number of white-winged doves in Arizona has been fairly stable since the 1970s. The average number of doves heard per route in 2002 was 26.7. Estimated harvests (99,900 in 2001) are low compared to those occurring several decades ago. In Texas, the range and density of white-winged doves continue to expand. In 2002, the whitewing population in Texas was estimated to be 2,329,000 birds, an increase of 5.7 percent from 2001. A more inclusive count in San Antonio documented more than 1 million birds. An estimated 197,000 whitewings were taken during the special whitewing season in south Texas, with an additional 986,000 birds taken statewide during the regular mourning dove season. The expansion of whitewings northward and eastward from Texas has led to nesting being reported in Louisiana, Arkansas, Oklahoma, Kansas, and Missouri. They have been sighted in Colorado, Montana, Nebraska, Iowa, and Minnesota. Whitewings are believed to be expanding northward from Florida and have been seen in Georgia, the Carolinas, and Pennsylvania.

White-tipped doves are maintaining a relatively stable population in the Lower Rio Grande Valley of Texas. They are most abundant in cities and, for the most part, are not available to hunting. The count in 2002 averaged 0.97 birds per stop, a 43 percent increase over the count in 2001. The estimated harvest during the special 4-day whitewing season was about 2,400 birds.

Hunting Season Proposals From Indian Tribes and Organizations

For the 2002–03 hunting season, we received requests from 29 tribes and Indian organizations. We actively solicit regulatory proposals from other tribal groups that are interested in working cooperatively for the benefit of waterfowl and other migratory game birds. We encourage tribes to work with us to develop agreements for management of migratory bird resources on tribal lands. It should be noted that this proposed rule includes generalized regulations for both early- and late-season hunting. A final rule will be published in a mid-August 2002 **Federal Register** that will include tribal regulations for the early-hunting season. The early season generally begins on September 1 each year and most commonly includes such species as American woodcock, sandhill cranes, mourning doves and white-winged doves. A final rule will also be published in a September 2002 **Federal Register** that will include regulations for late-season hunting. The late season begins on or around October 1 and most commonly includes waterfowl species.

In this current rulemaking, because of the compressed timeframe for establishing regulations for Indian tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length, and limits that will be permitted when final Federal frameworks are announced for early- and late-season regulations. For example, daily bag and possession limits for ducks on some areas are shown as ''Same as permitted in Pacific Flyway States under final Federal frameworks,'' and limits for geese will be shown as the same permitted by the State(s) in which the tribal hunting area is located.

The proposed frameworks for early-season regulations were published in the **Federal Register** on July 17, 2002 (67 FR 47224); early-season final frameworks will be published in mid-August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final frameworks for the late seasons will be published in mid-September. We will notify affected tribes of season dates, bag limits, etc., as soon as final frameworks are established. As previously discussed, no action is required by tribes wishing to observe migratory bird hunting regulations established by the State(s) where they are located. The proposed regulations for the 29 tribes with proposals that meet the established criteria are shown below.

(a) Bois Forte Band of Chippewa, Nett Lake, Minnesota (Tribal Members and Non-Tribal Hunters)

The Bois Forte Band of Chippewa is located in northern Minnesota, as specified in **Federal Register** 66, No. 83. Bois Forte is a 103,000-acre land area, home to 800 Band members. The reservation includes Nett Lake, a 7,400-acre wild rice lake.

In their 2002–2003 proposal, dated June 14, 2002, Bois Forte requested the authority to establish a waterfowl

season on their reservation. The season would be the same as that established by the State of Minnesota, except that shooting hours on opening day would be one-half hour before sunrise to one-half hour after sunset for tribal members. We note that shooting hours for non-tribal members can only go from one-half hour before sunrise to sunset on the reservation. Harvest under their proposal would not alter possession limits or species allowances already in place in Minnesota. Bois Forte requests these hours on opening day and for every hunting day for the remainder of the State's official, established season.

Bag limits for non-tribal hunters will not be changed from current, State of Minnesota established levels. Non-tribal persons hunting on Nett Lake on the first day of the season will be required to complete a survey upon completion of the day's hunting requesting: (1) Name and contact information; (2) hunting permit number (State and tribal); (3) number of hours hunted; (4) location of hunting site; (5) tribal guide name; (6) number and species of waterfowl harvested in possession; and (7) number and species of waterfowl shot but not recovered. Results will be collected and tallied and subsequently compared to previous season data.

Harvest information from the 2001–02 migratory bird season included 900 total ducks taken. Of these 900 taken, 700 were ring-neck ducks, 100 blue/green-winged teal, and 100 mallards. They had 224 hunters, similar to levels in the past.

The Band's Conservation Department regulates non-tribal harvest limits under the following regulations: (1) Non-tribal hunters must be accompanied at all times by a Band Member guide; (2) non-tribal hunters must have in their possession a valid small game hunting license, a Federal migratory waterfowl stamp, and a Minnesota State waterfowl stamp; (3) non-tribal hunters and Band Members must have only Service-approved non-toxic shot in possession at all times; (4) non-tribal hunters must conform to possession limits established and regulated by the State of Minnesota and the Bois Forte Band.

We propose to approve the Bois Forte Band of Chippewa regulations for the 2002–03 hunting season.

(b) Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nontribal Hunters)

The Colorado River Indian Reservation is located in Arizona and California. The Tribes own almost all lands on the reservation, and have full wildlife management authority.

In their 2002–03 proposal, the Colorado River Indian Tribes requested split dove seasons. They propose their early season begin September 1 and end September 15, 2002. Daily bag limits would be 10 mourning or 10 white-winged doves either singly or in the aggregate. The late season for doves is proposed to open November 16, 2002, and close January 13, 2003. The daily bag limit would be 10 mourning doves. The possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to noon in the early season and until sunset in the late season. Other special tribally set regulations would apply.

The Tribes also propose duck hunting seasons. The season would likely open September 28, 2002, and run until January 25, 2003. The Tribes propose the same season dates for mergansers, coots and common moorhens. The daily bag limit for ducks, including mergansers, would be the same as that allowed under Pacific Flyway Frameworks, except that the daily bag limits could contain no more than two goldeneye and two cinnamon teal. The possession limit would be twice the daily bag limit. The daily bag and possession limit for coots and common moorhens would be 25, singly or in the aggregate.

For geese, the Colorado River Indian Tribes propose a season of November 10, 2002, through January 19, 2003. The daily bag limit for geese would be four, but could include no more than three light geese or two dark geese. The possession limit would be eight, but could include no more than six light geese or four dark geese.

In 1996, the Tribe conducted a detailed assessment of dove hunting. Results showed approximately 16,100 mourning doves and 13,600 white-winged doves were harvested by approximately 2,660 hunters who averaged 1.45 hunter-days. Field observations and permit sales indicate that fewer than 200 hunters participate in waterfowl seasons. Under the proposed regulations described here and, based upon past seasons, we and the Tribes estimate harvest will be similar.

Hunters must have a valid Colorado River Indian Reservation hunting permit in their possession while hunting. As in the past, the regulations would apply both to tribal and non-tribal hunters, and nontoxic shot is required for waterfowl hunting.

We propose to approve the Colorado River Indian Tribes regulations for the 2002–03 hunting season.

(c) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Nontribal Hunters)

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the Tribes are currently operating under a cooperative agreement signed in 1990 that addresses fishing and hunting management and regulation issues of mutual concern. This agreement enables all hunters to utilize waterfowl hunting opportunities on the reservation. The Tribes' proposed special regulations for waterfowl hunting were submitted in a May 21, 2002, proposal.

As in the past, tribal regulations for nontribal members would be at least as restrictive as those established for the Pacific Flyway portion of Montana. Goose season dates would also be at least as restrictive as those established for the Pacific Flyway portion of Montana. Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset. Steel shot or other Federally-approved nontoxic shots are the only legal shotgun loads on the reservation for waterfowl or other game birds.

The requested season dates and bag limits are similar to past regulations. Harvest levels are not expected to change significantly. Standardized check station data from the 1993–94 and 1994–95 hunting seasons indicated no significant changes in harvest levels and that the large majority of the harvest is by non-tribal hunters.

We propose to approve the Tribes' request for special migratory bird regulations for the 2002–03 hunting season.

(d) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land owned by non-Indians. Since the 1993–94 season, the Tribe has selected special waterfowl hunting regulations independent of the State of South Dakota. The Tribe observes migratory bird hunting regulations contained in 50 CFR part 20.

In their 2002 proposal, the Tribe requested a duck and merganser season of October 5 to December 17, 2002, with a daily bag limit of six ducks, including no more than five mallards (only two of which may be hens), one canvasback, two redheads, two wood ducks, three

scaup, and one pintail. The merganser daily bag limit would be five and include no more than one hooded merganser. The daily bag limit for coots would be 15. For Canada geese, the Tribe proposes an October 19, 2002, to January 21, 2003, season with a three-bird daily bag limit. For white-fronted geese, the Tribe proposes a September 28 to December 22, 2002, season with a daily bag limit of two. For snow geese, the Tribe proposes a September 28, 2002, to January 2, 2003, season with a daily bag limit of 20. Similar to the last several years, the Tribe also requests a sandhill crane season from September 14 to October 20, 2002, with a daily bag limit of three. The Tribe proposes a mourning dove season from September 1 to October 31, 2002, with a daily bag limit of 15. In all cases, except snow geese, the possession limits would be twice the daily bag limit. There would be no possession limit for snow geese. Shooting hours would be from one-half hour before sunrise to sunset.

The season and bag limits would be essentially the same as last year and as such, the Tribe expects similar harvest. In 1994–95, duck harvest was 48 birds, down from 67 in 1993–94. Goose harvest during recent past seasons has been less than 100 geese. Total harvest on the reservation in 2000 was estimated to be 179 ducks and 868 geese.

We propose to approve the Tribe's requested seasons. We also remind the Tribe that all sandhill crane hunters are required to obtain a Federal sandhill crane permit. As such, the Tribe should contact us for further information on obtaining the needed permits. In addition, as with all other groups, we request the Tribe continue to survey and report harvest.

(e) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

Since 1996, the Service and the Fond du Lac Band of Lake Superior Chippewa Indians have cooperated to establish special migratory bird hunting regulations for tribal members. The Fond du Lac's May 22, 2002, proposal covers land set apart for the band under the Treaties of 1837 and 1854 in northeast and east-central Minnesota.

The band's proposal for 2002–03 is essentially the same as that approved last year. Specifically, the Fond du Lac Band proposes a September 14 to December 1, 2002, season on ducks, mergansers, coots and moorhens, and a September 1 to December 15, 2002, season for geese. For sora and Virginia rails, snipe, and woodcock, the Fond du Lac Band proposes a September 1 to December 1, 2002, season. Proposed daily bag limits would consist of the following:

Ducks: 18 ducks, including no more than 12 mallards (only 6 of which may be hens), 3 black ducks, 9 scaup, 6 wood ducks, 6 redheads, 3 pintails, and 3 canvasbacks.

Mergansers: 15 mergansers, including no more than 3 hooded mergansers.

Geese: 12 geese.

Coots and Common Moorhens (Common Gallinules): 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe: Eight common snipe.

Woodcock: Three woodcock.

The following general conditions apply:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid Ceded Territory License.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. There are no possession limits on any species, unless otherwise noted above. For purposes of enforcing bag limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

The Band anticipates harvest will be fewer than 500 ducks and geese.

We propose to approve the request for special migratory bird hunting regulations for the Fond du Lac Band of Lake Superior Chippewas.

(f) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

In the 1995–96 migratory bird seasons, the Grand Traverse Band of Ottawa and Chippewa Indians and the Service first cooperated to establish special regulations for waterfowl. The Grand Traverse Band is a self-governing, federally recognized Tribe located on the west arm of Grand Traverse Bay in Leelanau County, Michigan. The Grand Traverse Band is a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2002–03 season, the Grand Traverse Band of Ottawa and Chippewa Indians proposes that the tribal member duck season would run from September 15, 2002, through January 15, 2003. A daily bag limit of 12 would include no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens). For Canada geese, the Tribe proposes a September 1 through November 30, 2002, and a January 1, 2002, through February 8, 2003, season. For white-fronted geese, brant, and snow geese, the Tribe proposes a September 20 through November 30, 2002, season. The daily bag limit for all geese (including brant) would be five birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the Tribe.

For woodcock, snipe, and sora rail, the Tribe proposes a September 1 to November 14, 2002, season. The daily bag limit will not exceed five birds per species.

For mourning doves, the Tribe proposes a September 1 to November 14, 2002, season. The daily bag limit would be 10.

All other Federal regulations contained in 50 CFR part 20 would apply. The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. Harvest surveys from the 2001–2002 hunting season indicate that approximately 34 tribal hunters harvested an estimated 105 ducks and 70 Canada geese.

We propose to approve the Grand Traverse Band of Ottawa and Chippewa Indians' requested 2002–03 special migratory bird hunting regulations.

(g) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian

Fish and Wildlife Commission (GLIFWC, which represents the various bands). Beginning in 1986, a tribal season on ceded lands in the western portion of the State's Upper Peninsula was developed in coordination with the Michigan Department of Natural Resources, and we have approved special regulations for tribal members in both Michigan and Wisconsin since the 1986–87 hunting season. In 1987, the GLIFWC requested, and we approved, special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin concurred with the regulations, although Wisconsin has raised some concerns each year. Minnesota did not concur with the regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. We acknowledge the State's concern, but point out that the U.S. Government has recognized the Indian hunting rights decided in the Voigt case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the Voigt decision did not specifically address ceded land outside Wisconsin. We believe this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin. Consequently, in view of the above, we have approved special regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of reserved treaty rights for band members to hunt and fish was pivotal in our decision to approve a special 1991–92 season for the 1836 ceded area in Michigan.

In a May 30, 2002, letter, the GLIFWC proposed off-reservation special migratory bird hunting regulations for the 2002–03 seasons on behalf of the member Tribes of the Voigt Intertribal Task Force of the GLIFWC (for the 1837 and 1842 Treaty areas) and the Bay Mills Indian Community (for the 1836 Treaty area). Member Tribes of the Task Force are: The Bad River Band of Lake Superior Tribe of Chippewa Indians, The Lac Courte Oreilles Band of Lake Superior Tribe of Chippewa Indians, the Lac du Flambeau Band of Lake Superior Tribe of Chippewa Indians, the Red Cliff Band of Lake Superior Tribe of Chippewa Indians, the St. Croix Chippewa Indians of Wisconsin, the Sokaogon Chippewa Community (Mole Lake Band), the Mille Lacs Band of Chippewa Indians in Minnesota, the Lac Vieux Desert Band of Chippewa Indians and the Keweenaw Bay Indian Community in Michigan. Details of the proposed regulations are shown below. In general, the proposal is essentially the same as the regulations approved for the 2001–02 season.

Results of 1987–98 hunter survey on off-reservation tribal duck harvest in the Wisconsin/Michigan entire ceded territory ranged from 1,022 to 2,374 with an average of 1,422. Estimated goose harvest has ranged from 72 to 586, with an average of 310. Under the proposed regulations, harvest is expected to remain within these ranges. Tribal harvest in the Minnesota ceded territory is anticipated to be much smaller than in the Wisconsin/Michigan area since waterfowl hunting has been limited to 10 individuals thus far. Due to the limited distribution of doves and dove habitat in the ceded territory, and the relatively small number of tribal off-reservation migratory bird hunters, harvest is expected to be negligible.

We believe that regulations advanced by the GLIFWC for the 2002–03 hunting season are biologically acceptable and recommend approval. If the regulations are finalized as proposed, we would request that the GLIFWC closely monitor the member band duck harvest and take any actions necessary to reduce harvest if locally nesting populations are being significantly impacted.

The Commission and the Service are parties to a Memorandum of Agreement (MOA) designed to facilitate the ongoing enforcement of Service-approved tribal migratory bird regulations. Its intent is to provide long-term cooperative application.

Also, as in recent seasons, the proposal contains references to Chapter 10 of the Migratory Bird Harvesting Regulations of the Model Off-Reservation Conservation Code. Chapter 10 regulations parallel State and Federal regulations and, in effect, are not changed by this proposal.

The GLIFWC's proposed 2002–03 waterfowl hunting season regulations are as follows:

Ducks

A. *Wisconsin and Minnesota 1837 and 1842 Zones:*

Season Dates: Begin September 14 and end December 1, 2002.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

B. *Michigan 1836 and 1842 Treaty Zones:*

Season Dates: Begin September 14 and end December 1, 2002.

Daily Bag Limit: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 pintails, and 1 canvasback.

Mergansers: All Ceded Areas

Season Dates: Begin September 14 and end December 1, 2002.

Daily Bag Limit: Five mergansers.

Geese: All Ceded Areas

Season Dates: Begin September 1 and end December 1, 2002. In addition, any portion of the ceded territory which is open to State-licensed hunters for goose hunting after December 1 shall also be open concurrently for tribal members.

Daily Bag Limit: 10 geese in aggregate.

Other Migratory Birds: All Ceded Areas

A. *Coots and Common Moorhens (Common Gallinules):*

Season Dates: Begin September 14 and end December 1, 2002.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. *Sora and Virginia Rails:*

Season Dates: Begin September 14 and end December 1, 2002.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Possession Limit: 25.

C. *Common Snipe:*

Season Dates: Begin September 14 and end December 1, 2002.

Daily Bag Limit: Eight common snipe.

D. *Woodcock:*

Season Dates: Begin September 3 and end December 1, 2002.

Daily Bag Limit: Five woodcock.

E. *Mourning Dove:* 1837 and 1842 Ceded Territories:

Season Dates: Begin September 1 and end October 30, 2002.

Daily Bag Limit: 15 mourning dove.

General Conditions

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by federal courts in the *Lac Courte Oreilles*v. *State of Wisconsin (Voigt) and Mille Lacs Band* v. *State of Minnesota* cases. The respective Chapter 10 of these Model Codes regulate territory migratory bird hunting. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR Part 20 as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

3. Particular regulations of note include:

A. Nontoxic shot will be required for all waterfowl hunting.

B. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

C. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds that are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

D. The Tribe proposes that the baiting restrictions included in the respective sections 10.05 (2)(h) of the model ceded territory conservation codes be amended to include language which parallels that in place for non-tribal members as published in 64 FR 29804, June 3, 1999.

E. They also propose to remove the shell limit restrictions included in the respective sections 10.05 (2)(b) of the model ceded territory conservation codes.

4. Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan will comply with tribal codes that contain provisions that parallel applicable Michigan laws concerning duck blinds and/or decoys.

(h) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The Tribe owns all lands on the reservation and has recognized full wildlife management authority. In general, the proposed seasons would be more conservative than allowed by the Federal frameworks of last season and by States in the Pacific Flyway.

In a May 23, 2002, proposal, the Tribe proposed a 2002–03 waterfowl season beginning October 5 and a closing date of November 30, 2002. Daily bag and possession limits for waterfowl would be the same as Pacific Flyway States. The Tribe proposes a season on Canada geese with a two-bird daily bag limit. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

During the Jicarilla Game and Fish Department's 2001–02 season, estimated duck harvest was 889, which is within the historical harvest range. The species composition in the past has included mainly mallards, gadwall, wigeon, and teal. Northern pintail comprised 3 percent of the total harvest in 2001. The estimated harvest of geese was 26 birds.

The proposed regulations are essentially the same as were established last year. The Tribe anticipates the maximum 2002–03 waterfowl harvest would be around 1100 ducks and 30–40 geese.

We propose to approve the Tribe's requested 2002–03 hunting seasons.

(i) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

The Kalispel Reservation was established by Executive Order in 1914, and currently comprises approximately 4,600 acres. The Tribe owns all Reservation land and has full management authority. The Kalispel Tribe has a fully developed wildlife program with hunting and fishing codes. The Tribe enjoys excellent wildlife management relations with the State. The Tribe and the State have an operational Memorandum of Understanding with emphasis on fisheries but also for wildlife. The nontribal member seasons described below pertain to a 176-acre waterfowl management unit. The Tribe is utilizing this opportunity to rehabilitate an area that needs protection because of past land use practices, as well as to provide additional waterfowl hunting in the area. Beginning in 1996, the requested regulations also included a proposal for Kalispel-member-only migratory bird hunting on Kalispel-ceded lands within Washington, Montana, and Idaho.

For the 2002–03 migratory bird hunting seasons, the Kalispel Tribe proposed, in a May 21, 2002, letter, tribal and nontribal member waterfowl seasons. For nontribal members, the Tribe requests that the season for ducks begin September 20, 2002, and end January 26, 2003. In that period, nontribal hunters would be allowed to hunt approximately 92 days. Hunters should obtain further information on specific hunt days from the Kalispel Tribe. The Tribe also requests the season for geese begin on September 1, to September 15, 2002, and begin on October 1, 2002, to January 26, 2003. Daily bag and possession limits would be the same as those for the State of Washington.

The Tribe reports a 2001–02 nontribal harvest of 105 ducks and 0 geese. Under the proposal, the Tribe expects harvest to be similar to last year and less than 100 geese and 200 ducks.

All other State and Federal regulations contained in 50 CFR part 20, such as use of non-toxic shot and possession of a signed migratory bird hunting stamp, would be required.

For tribal members on Kalispel-ceded lands, the Kalispel propose outside frameworks for ducks and geese of September 1, 2002, through January 31, 2003. However, during that period, the Tribe proposes that the season run continuously. Daily bag and possession limits would be concurrent with the Federal rule.

The Tribe reports that there was no 2001–02 tribal harvest. Under the proposal, the Tribe expects harvest to be less than 500 birds for the season with less than 200 geese. Tribal members would be required to possess a signed Federal migratory bird stamp and a tribal ceded lands permit.

We propose to approve the regulations requested by the Kalispel Tribe provided that the nontribal seasons conform to Treaty limitations and final Federal frameworks for the Pacific Flyway. For the 2002–03 season, outside Federal frameworks for ducks in the Pacific Flyway under the ''moderate'' and ''liberal'' regulatory alternatives are September 21, 2002, through January 26, 2003. For geese, frameworks for special early Canada goose seasons are September 1 through September 15, 2002, while regular seasons frameworks are September 28, 2002, through January 20, 2003. All seasons for nontribal hunters must conform with the 107-day maximum season length established by the Treaty.

(j) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

The Klamath Tribe currently has no reservation, per se. However, the Klamath Tribe has reserved hunting, fishing, and gathering rights within its former reservation boundary. This area of former reservation, granted to the Klamaths by the Treaty of 1864, is over 1 million acres. Tribal natural resource management authority is derived from the Treaty of 1864, and carried out cooperatively under the judicially enforced Consent Decree of 1981. The parties to this Consent Decree are the Federal Government, the State of Oregon, and the Klamaths. The Klamath Indian Game Commission sets the seasons. The tribal biological staff and

tribal Regulatory Enforcement Officers monitor tribal harvest by frequent bag checks and hunter interviews.

The Klamath Tribe proposed season dates of October 1, 2002, through January 28, 2003. Daily bag limits would be nine for ducks and six for geese, with possession limits twice the daily bag limit. The daily bag and possession limit for coots would be 25. Shooting hours would be one-half hour before sunrise to one-half hour after sunset. Steel shot is required.

Based on the number of birds produced in the Klamath Basin, the Tribe expects that this year's harvest will be similar to last year's. Information on tribal harvest suggests that more than 70 percent of the annual goose harvest is local birds produced in the Klamath Basin.

We propose to approve the Klamath Tribe's requested regulations.

(k) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

The Leech Lake Band of Ojibwe is a federally recognized Tribe located in Cass Lake, Minnesota. The reservation employs conservation officers to enforce conservation regulations. The Service and the Tribe have cooperatively established migratory bird hunting regulations since 2000.

For the 2002–03 season, the Tribe requests a duck season starting on September 14 and ending December 31, 2002. They request a goose season to run from September 1 through December 31, 2002. Daily bag limits for both ducks and geese would be 10. Possession limits would be twice the daily bag limit. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

The annual harvest by tribal members on the Leech Lake Reservation is estimated at 1,000–2,000 birds.

We propose to approve the Leech Lake Band of Ojibwe's requested 2002–03 special migratory bird hunting regulations.

(l) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

The Little River Band of Ottawa Indians is a self-governing, federally recognized Tribe located in Manistee, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season. Ceded lands are located in Lake, Mason, Manistee, and Wexford Counties.

For the 2002–03 season, the Little River Band of Ottawa Indians proposes duck, merganser, coots, and common moorhen seasons from September 28 through December 5, 2002. A daily bag limit of six ducks would include no more than one pintail, one canvasback, one black duck, two wood ducks, two redheads, three scaup, and four mallards (only one of which may be a hen). The daily bag limit for mergansers would be five, of which only one could be a hooded merganser. Possession limits for mergansers is 10, only 2 of which may be hooded mergansers. The daily bag limit for coots and common moorhens would be 15. Possession limits would be twice the daily bag limit.

For Canada geese, the Tribe proposes a September 1 through September 15, 2002, early season, a September 28 through December 5, 2002, regular season, and a January 1 through February 8 2003, late season. Daily bag limits would be five geese in the early and late season and two geese in the regular portion of the season. The possession limit would be twice the daily bag limit. For white-fronted geese, snow geese, Ross geese, and brant, the Tribe proposes a September 28 through December 5, 2002, season. The daily bag limit for all geese (including brant) would be 5 birds. Possession limits would be 10.

For snipe, woodcock, and rails, the Tribe proposes a September 15 to November 14, 2002, season. The daily bag limit would be 8 common snipe, 3 woodcock, and 8 rails. Possession limits for snipe and woodcock would be twice the daily bag limit. The possession limit for rails would be 25.

For mourning dove, the Tribe proposes a September 15 to November 14, 2002, season. The daily bag limit would be 10 and possession limit of 20.

The Tribe proposes to monitor harvest through mail surveys. General Conditions are as follows:

A. All tribal members will be required to obtain a valid tribal resource card and 2002–03 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

(3) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

We propose to approve Little River Band of Ottawa Indians' requested 2002–03 special migratory bird hunting regulations.

(m) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)

The Little Traverse Bay Bands of Odawa Indians is a self-governing, federally recognized Tribe located in Petoskey, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2002–03 season, the Little Traverse Bay Bands of Odawa Indians propose regulations similar to other Tribes in the 1836 treaty area. The tribal member duck season would run from September 20, 2002, through January 20, 2003. A daily bag limit of 10 would include no more than 1 pintail, 1 canvasback, 1 hooded merganser, 2 black ducks, 2 wood ducks, 2 redheads, and 5 mallards (only 2 of which may be hens). For Canada geese, the Tribe proposes a September 1, 2002 through January 20, 2003 season. For white-fronted geese, brant, and snow geese, the Tribe proposes an October 1 through November 30, 2002, season. The daily bag limit for all geese (including brant) would be five birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the Tribe. Possession limits are twice the daily bag limit.

For woodcock, snipe, and sora rail, the Tribe proposes a September 1 to November 14, 2002, season. The daily bag limit shall not exceed five birds per species. The possession limit shall not exceed two days bag limit for all birds.

All other Federal regulations contained in 50 CFR part 20 would apply. The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. In particular, the Tribe proposes monitoring the harvest of Southern James Bay Canada geese to assess any impacts of tribal hunting on the population.

We propose to approve the Little Traverse Bay Bands of Odawa Indians'

requested 2002–03 special migratory bird hunting regulations.

(n) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)

The Lower Brule Sioux Tribe first established tribal migratory bird hunting regulations for the Lower Brule Reservation in 1994. The Lower Brule Reservation is about 214,000 acres in size and is located on and adjacent to the Missouri River, south of Pierre. Land ownership on the reservation is mixed, and until recently, the Lower Brule Tribe had full management authority over fish and wildlife via an MOA with the State of South Dakota. The MOA provided the Tribe jurisdiction over fish and wildlife on reservation lands, including deeded and Corps of Engineers taken lands. For the 2002–03 season, the two parties have come to an agreement that provides the public a clear understanding of the Lower Brule Sioux Wildlife Department license requirements and hunting season regulations. The Lower Brule Reservation waterfowl season is open to tribal and non-tribal hunters.

For the 2002–03 migratory bird hunting season, the Lower Brule Sioux Tribe proposes a duck, merganser, and coot season length of 97 days, the same number of days tentatively allowed under the ''liberal'' regulatory alternative in the High Plains Management Unit for this season. The Tribe's proposed season would run from October 5, 2002, through January 9, 2003. The daily bag limit would be six birds, including no more than five mallards (only one of which may be a hen), one pintail, two redheads, two wood ducks, three scaup, one canvasback, and one mottled duck. Non-member canvasback season is closed. The daily bag limit for mergansers would be five, only one of which could be a hooded merganser. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits. The Tribe also proposes a youth waterfowl hunt on September 28–29, 2002.

The Tribe's proposed Canada goose season would run from October 19, 2002, through January 21, 2003, with a daily bag limit of three Canada geese. The tribe's proposed white-fronted goose season would run from October 19, 2002, through January 12, 2003, with a daily bag limit of two white-fronted geese. The tribe's proposed light goose season would run from October 19, 2002, through January 18, 2003, and February 25 through March 10, 2003. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

In the 2001–02 season, hunters harvested an estimated 2,787 geese and 754 ducks. In the 2001–02 season, duck harvest species composition was primarily mallard (81 percent), gadwall (5 percent), wigeon (5 percent), and green-winged teal, redhead, scaup, pintail, bufflehead, and wood duck (9 percent collectively). Goose harvest species composition in 2001 at Mni Sho Sho was approximately 91 percent Canada geese, 7 percent snow geese, and 1 percent white-fronted geese. Harvest of geese harvested by other hunters was approximately 95 percent Canada geese, 4 percent snow geese, and 1 percent white-fronted geese. However, typical harvest is 100 percent Canada geese with less than 1 percent snow geese.

The tribe anticipates a duck harvest similar to the 8-year average (418) and a goose harvest below the target harvest level of 3,000 to 4,000 geese. All basic Federal regulations contained in 50 CFR part 20, including the use of steel shot, Migratory Waterfowl Hunting and Conservation Stamp, etc., would be observed by the tribe's proposed regulations. In addition, the Lower Brule Sioux Tribe has an official Conservation Code that was established by Tribal Council Resolution in June 1982 and updated in 1996.

We propose to approve the tribe's requested regulations for the Lower Brule Reservation.

(o) Makah Indian Tribe, Neah Bay, Washington (Tribal Members Only)

The Makah Indian Tribe and the Service have been cooperating to establish special regulations for migratory game birds on the Makah Reservation and traditional hunting land off the Makah Reservation since the 2001–02 hunting season. Lands off the Makah Reservation are those contained within the boundaries of the State of Washington Game Management Units 601–603 and 607.

The Makah Indian Tribe proposes a duck and coot hunting season from September 15, 2002, to January 13, 2003. The daily bag limit is seven ducks including no more than one canvasback and one redhead. The daily bag limit for coots is 25. The tribe has a year-round closure on wood ducks and harlequin ducks. For geese, the tribe proposes the season open on September 15, 2002, and close January 13, 2003. The daily bag limit for geese is four. The tribe notes that there is a year-round closure on Aleutian and Dusky Canada geese. Shooting hours for all species of waterfowl are one-half hour before sunrise to sunset.

The tribe anticipates that harvest under this regulation will be relatively low since fewer than 20 hunters are likely to participate at this time. The tribe expects fewer than 70 ducks and 20 geese are expected to be harvested during the 2002–03 migratory bird hunting season.

All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also proposed by the tribe: (1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area; (2) hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl; (3) the Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within one mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation; (4) the use of live decoys and/or baiting to pursue any species of waterfowl is prohibited; (5) steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited; (6) the use of dogs is permitted to hunt waterfowl.

We propose to approve the Makah Indian Tribe's requested 2002–03 special migratory bird hunting regulations.

(p) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters)

Since 1985, we have established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The Navajo Nation owns almost all lands on the reservation and has full wildlife management authority.

The tribe requests special migratory bird hunting regulations on the reservation for both tribal and nontribal members for the 2002–03 hunting season for ducks (including mergansers), Canada geese, coots, band-tailed pigeons, and mourning doves. For waterfowl, the Navajo Nation requests the earliest opening dates and longest seasons, and the same daily bag and possession limits permitted Pacific Flyway States under final Federal frameworks.

For both mourning dove and band-tailed pigeons, the Navajo Nation proposes seasons of September 1 through 30, 2002, with daily bag limits of 10 and 5 for mourning dove and

band-tailed pigeon, respectively. Possession limits would be twice the daily bag limits.

The Nation requires tribal members and nonmembers to comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face of the stamp. Special regulations established by the Navajo Nation also apply on the reservation.

The tribe anticipates a total harvest of less than 300 mourning doves, 100 band-tailed pigeons, 500 ducks, coots, and mergansers, and 300 Canada geese for the 2002–03 season. Harvest will be measured by mail survey forms. Through the established Tribal Nation Code, Title 17 and 18 U.S.C. 1165, the tribe will take action to close the season, reduce bag limits, or take other appropriative actions if the harvest is detrimental to the migratory bird resource.

We propose to approve the Navajo Nation's request for these special regulations for the 2002–03 migratory bird hunting seasons.

(q) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Since 1991–92, the Oneida Tribe of Indians of Wisconsin and the Service have cooperated to establish uniform regulations for migratory bird hunting by tribal and non-tribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Tribe's Conservation Department has enforced their own hunting regulations within those original reservation limits. The Oneida Tribe also has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same for the tribe and Wisconsin.

In a May 23, 2002, letter, the tribe proposed special migratory bird hunting regulations. For ducks, the tribe described the general ''outside dates'' as being September 28 through November 30, 2002, inclusive. The tribe proposes a daily bag limit of six birds, which could include no more than six mallards (three hen mallards), five wood ducks, one canvasback, one redhead, two pintails, and one hooded merganser.

For geese, the tribe requests a season between September 1 and December 31, 2002, with a daily bag limit of three Canada geese. Hunters will be issued three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. The tribe will close the season November 16 to 24, 2002. If a quota of 150 geese is attained before the season concludes, the tribe will recommend closing the season early.

For woodcock, the tribe proposes a season between September 14 and November 15, 2002, with a daily bag and possession limit of 5 and 10, respectively.

The tribe proposes shooting hours be one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the tribe must comply with all State of Wisconsin regulations. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Indian hunters would be exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin.

(r) Point No Point Treaty Tribes, Kingston, Washington (Tribal Members Only)

Since 1996, the Service and the Point No Point Treaty Tribes, consisting of the Skokomish, Port Gamble S'klallam, Jamestown S'klallam, and Elwha S'klallam tribes, have cooperated to establish special regulations for migratory bird hunting. The four tribes have reservations located on the Olympic Peninsula in Washington. All four tribes have successfully administered tribal hunting regulations since 1985, and each tribe has a comprehensive hunting ordinance.

For the 2002–03 season, we have not yet heard from the tribe regarding this season's proposal. Based on last year, we assume the tribe would request seasons for ducks, geese, brant, coots, snipe, and mourning doves. For ducks, coots, geese, brant, and snipe, the season would run from September 15, 2002, to January 15, 2003, with a daily bag limit of 7 ducks, 25 coots, 4 geese (including no more than 3 light geese), 2 brant, and 8 snipe. The duck daily bag limit would include mergansers and could include no more than two hen mallards, two pintails, one canvasback, and two redheads. The season is closed on harlequin ducks and Aleutian Canada geese. All possession limits would be twice the daily bag limit. For mourning doves, the season would start September 1, 2002, and end January 15, 2003, with a daily bag limit of 10.

The tribes require that all hunters authorized to hunt migratory birds on the reservation obtain a tribal hunting permit from the respective tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office. Tribal harvest in 1999 under similar regulations was approximately 185 ducks, 22 geese, and 15 coots.

We propose to approve the Point No Point Treaty Tribe's 2002–03 regulations provided the tribe provides the appropriate confirmation for the seasons.

(s) Seminole Tribe of Florida, Big Cypress Seminole Reservation, Clewiston, Florida (Tribal Members and Nontribal Hunters)

The Seminole Tribe of Florida and the Service have cooperated since 1995 to establish regulations for the 70,000-acre Big Cypress Seminole Reservation. Located northwest of Miami, the Big Cypress Seminole Reservation is totally tribally owned, and the tribe has full wildlife management authority.

For the 2002–03 season, we have not yet heard from the tribe regarding this season's proposal. Based on last year, we assume the tribe would request a mourning dove season from September 16, 2002, through January 20, 2003. Hunting would be allowed for tribal and non-tribal members, but would be on Sundays only. Daily bag limits would be the same as those allowed within the Federal frameworks for the State of Florida. All other Federal regulations contained in 50 CFR part 20 would apply. In 1997, under identical regulations, hunters harvested 2,078 doves on the reservation. The anticipated harvest of doves taken during the 2002 season would be limited to 12,000 birds. The tribe controls all entry to the hunt area.

We propose to approve the Seminole Tribe's requested 2002–03 special migratory bird hunting regulations upon receipt of their proposal and confirmation that the tribe would like to have a special season.

(t) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)

Almost all of the Fort Hall Indian Reservation is tribally owned. The tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by non-tribal members on reservation lands

owned by non-Indians. As a compromise, since 1985, we have established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the tribes and provided for different season dates than in the remainder of the State. We agreed to the season dates because they seemed to provide additional protection to mallards and pintails. The State of Idaho concurred with the zoning arrangement. We have no objection to the State's use of this zone again in the 2002–03 hunting season, provided the duck and goose hunting season dates are the same as on the reservation.

In a proposal for the 2002–03 hunting season, the Shoshone-Bannock Tribes requested a continuous duck (including mergansers) season with the maximum number of days and the same daily bag and possession limits permitted for Pacific Flyway States, under final Federal frameworks. The tribes propose that, if the same number of hunting days are permitted as last year, the season would have an opening date of October 5, 2002, and a closing date of January 5, 2003. Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted for Pacific Flyway States. The tribes anticipate harvest will be between 2,000 and 5,000 ducks.

The tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The tribes propose that, if the same number of hunting days are permitted as in previous years, the season would have an opening date of October 12, 2002, and a closing date of January 11, 2003. The tribes anticipate harvest will be between 4,000 and 6,000 geese.

Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours, use of steel shot, and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

We note that the requested regulations are nearly identical to those of last year and propose they be approved for the 2002–03 hunting season.

(u) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

The Squaxin Island Tribe of Washington and the Service have cooperated since 1995 to establish special tribal migratory bird hunting regulations. These special regulations apply to tribal members on the Squaxin Island Reservation, located in western Washington near Olympia, and all lands within the traditional hunting grounds of the Squaxin Island Tribe.

For 2002–03, the tribe requested to establish duck and coot seasons that would run from September 15, 2002, through January 15, 2003. The daily bag limit for ducks would be five per day and could include only one canvasback. The season on harlequin ducks would be closed. For coots the daily bag limit would be 25. For snipe, the tribe proposes the season start on September 15, 2002, and end on January 15, 2003. The daily bag limit for snipe would be eight.

For geese, the tribe proposes establishing a season that would run from September 15, 2002, through January 15, 2003. The daily bag limit for geese would be four and could include only two snow geese and one dusky Canada goose. The season on Aleutian and cackling Canada geese would be closed. For brant, the tribe proposes to establish a September 15 to December 31, 2002, season with a daily bag limit of two. The tribe also propose a September 1 to December 31, 2002, season for band-tailed pigeons with a daily bag limit of five.

In all cases, the possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to one-half hour after sunset, and steel shot would be required for migratory bird hunting. Further, the tribe requires that all harvest be reported to their Natural Resources Office within 72 hours.

In 1995, the tribe reported no harvest of any species. Tribal regulations are enforced by the tribe's Law Enforcement Department.

We propose to approve the Squaxin Island Tribe's 2002–03 special migratory bird hunting regulations.

(v) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)

The Stillaguamish Tribe of Indians and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe is proposing regulations to hunt all open and unclaimed lands under the Treaty of Point Elliott of January 22, 1855, including their main hunting grounds around Camano Island, Skagit Flats, Port Susan to the border of the Tulalip Tribe's Reservation. Ceded lands are located in Whatcom, Skagit, Snohomish, and Kings Counties, and a portion of Pierce County, Washington. The Stillaguamish Tribe of Indians is a federally recognized tribe and reserves the Treaty Right to hunt (*U.S.* v. *Washington*).

The tribe proposes that duck (including mergansers, sea ducks, and coots), goose, and snipe seasons run from October 1, 2002 to January 31, 2003. The daily bag limit on ducks (including sea ducks and mergansers) is 10 and shall include no more than 7 mallards (only 3 of which can be hens), 3 pintail, 3 redhead, 3 scaup, and 3 canvasback. The daily bag limit for coot is 25. For geese, the daily bag limit is six. The daily bag limit on brant is three. The daily bag limit for snipe is ten. Possession limits are totals of two daily bag limits.

Harvest is regulated by a punch card system. Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a non-toxic shot as required by Federal regulations.

The tribe anticipates a total harvest of 200 ducks, 100 geese, 50 mergansers, 50 brant, 100 coots, and 100 snipe. Anticipated harvest needs include subsistence and ceremonial needs. Certain species may be closed to hunting for conservation purposes, and consideration for the needs of certain species will be addressed.

The Service proposes to approve the request for special migratory bird hunting regulations for the Stillaguamish Tribe of Indians.

(w) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

In 1996, the Service and the Swinomish Indian Tribal Community began cooperating to establish special regulations for migratory bird hunting. The Swinomish Indian Tribal Community is a Federally recognized Indian tribe consisting of the Suiattle, Skagit, and Kikialos. The Swinomish Reservation was established by the Treaty of Point Elliott of January 22, 1855, and lies in the Puget Sound area north of Seattle, Washington.

The tribe proposes to establish a migratory bird hunting season on all areas that are open and unclaimed and consistent with the meaning of the treaty. The tribe requests to establish duck, merganser, Canada goose, brant, and coot seasons opening on the earliest possible date allowed by the final Federal frameworks for the Pacific Flyway and closing 30 days after the State of Washington closes its season. The Swinomish request an additional three birds of each species over that

allowed by the State for daily bag and possession limits.

The Community normally anticipates that the regulations will result in the harvest of approximately 300 ducks, 50 Canada geese, 75 mergansers, 100 brant, and 50 coot. The Swinomish utilize a report card and permit system to monitor harvest and will implement steps to limit harvest where conservation is needed. All tribal regulations will be enforced by tribal fish and game officers.

On reservation, the Tribal Community would propose a hunting season for the above-mentioned species beginning on the earliest possible opening date and closing March 9, 2002. The Swinomish manage harvest by a report card permit system and anticipate harvest will be similar to that expected off reservation.

We believe the estimated harvest by the Swinomish will be minimal and will not adversely affect migratory bird populations. We propose to approve the Tribal Community's regulations for the 2002–03 season.

(x) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

The Tulalip Tribes are the successors in interest to the tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes' government is located on the Tulalip Indian Reservation just north of the City of Everett in Snohomish County, Washington. The tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to nonmember hunting unless opened by Tulalip Tribal regulations.

The Tulalip Tribes proposed tribal and nontribal hunting regulations for the 2002–03 season. Migratory waterfowl hunting by Tulalip Tribal members is authorized by Tulalip Tribal Ordinance No. 67. For ducks, mergansers, coot, and snipe, the proposed season for tribal members would be from September 15, 2002, through February 28, 2003. In the case of nontribal hunters hunting on the reservation, the season would be the latest closing date and the longest period of time allowed under final Pacific Flyway Federal frameworks. Daily bag and possession limits for Tulalip Tribal members would be 7 and 14 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail, and wood duck, the bag and possession limits would be the same as those established in accordance with final Federal frameworks. For nontribal hunters, bag and possession limits would be the same as those permitted under final Federal frameworks. Nontribal members should check with the Tulalip tribal authorities regarding additional conservation measures which may apply to specific species managed within the region. Ceremonial hunting may be authorized by the Department of Natural Resources at any time upon application of a qualified tribal member. Such a hunt shall have a bag limit designed to limit harvest only to those birds necessary to provide for the ceremony.

For geese, tribal members are proposed to be allowed to hunt from September 15, 2002, through February 28, 2003. Non-tribal hunters would be allowed the longest season and the latest closing date permitted for the State of Washington under final Federal frameworks. For tribal hunters, the goose daily bag and possession limits would be 7 and 14, respectively, except that the bag limits for brant, cackling Canada geese, and dusky Canada geese would be those established in accordance with final Federal frameworks. For nontribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the Pacific Flyway. The Tulalip Tribes also set a maximum annual bag limit for those tribal members who engage in subsistence hunting of 365 ducks and 365 geese.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the tribe. Nontribal hunters 16 years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face of the stamp.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, harvest information indicates a total take by tribal and nontribal hunters under 1,000 ducks and 500 geese, annually.

We propose approval of the Tulalip Tribe's request for the above seasons. We request that harvest be monitored closely and regulations be reevaluated for future years if harvest becomes too great in relation to population numbers.

(y) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)

The Upper Skagit Indian Tribe and the Service have cooperated to establish special regulations for migratory game birds since 2001. The tribe has jurisdiction over lands within Skagit and Whatcom Counties, Washington. Migratory bird hunting would take place in Washington State Game Units 407, 437, and 418, which comprises the northern portion of the lands under tribal jurisdiction. Tribal hunters are issued a harvest report card that will be shared with the State of Washington.

For the 2002–03 season, the Tribe requests a season of November 1, 2002, and ending February 8, 2003. The Tribe proposes a daily bag limit of 15 with a possession limit of 20. The coot daily bag limit is 20 with a possession limit of 30. The Tribe proposes a goose season from November 1, 2002, to February 8, 2003, with a daily bag limit of seven geese and five brant. The possession limit for geese and brant are 10 and 7, respectively.

The Tribe proposes a mourning dove season between September 1 to December 31, 2002, with a daily bag limit of 12.

The anticipated migratory bird harvest under this proposal would be 100 ducks, 5 geese, 2 brant, and 10 coots. Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR.

The Service proposes to approve the request for special migratory bird hunting regulations for the Upper Skagit Indian Tribe. We request that the tribe closely monitor harvest of this special migratory bird hunting season.

(z) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

The Wampanoag Tribe of Gay Head is a federally-recognized tribe located on the island of Martha's Vineyard in Massachusetts. The Tribe has approximately 560 acres of land, which it manages for wildlife through its natural resources department. The Tribe also enforces its own wildlife laws and regulations through the natural resources department.

For the 2002–03 season, the tribe proposes a duck season of October 28, 2002, to February 24, 2003. The tribe proposes a daily bag limit of six birds, which could include no more than two hen mallards, two black ducks, two

mottled ducks, one fulvous whistling duck, four mergansers, three scaup, one hooded merganser, two wood ducks, one canvasback, two redheads, and one pintail. The season for harlequins would be closed. The tribe proposes a teal (green-winged and blue) season of October 19, 2002, to January 31, 2003. A daily bag limit of six teal would be in addition to the daily bag limit for ducks.

For sea ducks, the tribe proposes a season between October 28, 2002, and February 24, 2003, with a daily bag limit of seven, which could include no more than one hen eider and four of any one species unless otherwise noted above.

For geese, the tribe requests a season between September 14 to September 21, 2002, and November 1, 2002, through February 28, 2003, with a daily bag limit of 5 Canada geese during the first period and three Canada geese during the second period. They propose a daily bag limit of 15 snow geese.

For woodcock, the tribe proposes a season between October 19 and November 30, 2002, with a daily bag limit of three.

The tribe currently has 20 registered tribal hunters and estimates harvest to be no more than 40 geese, 50 mallards, 50 teal, 50 black ducks, and 50 of all other species combined. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20.

The Service proposes to approve the request for special migratory bird hunting regulations for the Wampanoag Tribe of Gay Head and requests that the tribe closely monitor harvest in this first season of establishing special migratory bird hunting regulations.

(aa) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only)

The White Earth Band of Ojibwe is a federally-recognized tribe located in northwest Minnesota and encompasses all of Mahnomen County and parts of Becker and Clearwater Counties. The reservation employs conservation officers to enforce migratory bird regulations. The tribe and the Service first cooperated to establish special tribal regulations in 1999.

For the 2002–03 migratory bird hunting season, the White Earth Band of Ojibwe request a duck, merganser, and coot season to start September 7 and end December 16, 2002. For ducks, they request a daily bag limit of 10 including no more than 2 mallards and 2 canvasback. The merganser daily bag limit would be 5 with no more than 2 hooded mergansers, and the coot daily bag limit would be 20. For geese, the tribe proposes a September 1 to December 15, 2002, season with a daily bag limit of five geese.

For dove, rail, woodcock, and snipe, the tribe would propose a September 7 to December 31, 2002, season with daily bag limits of 25 doves, 25 rails, 10 woodcock, and 10 snipe. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

Based on past harvest surveys, the tribe anticipates harvest of 1,000 to 2,000 Canada geese and 1,000 to 1,500 ducks. The White Earth Reservation Tribal Council employs 4 full-time Conservation Officers to enforce migratory bird regulations.

We propose to approve the White Earth Band of Ojibwe requested 2002–03 special migratory bird hunting regulations for this year. We, however, note that our approval of the September 7 opening date for ducks is contingent upon the selection of either a ''liberal'' or ''moderate'' package for the 2002–03 season. We further request that the tribe closely monitor the effects of harvest from the early opening date for ducks upon final approval.

(bb) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

The White Mountain Apache Tribe owns all reservation lands, and the tribe has recognized full wildlife management authority. The White Mountain Apache Tribe has requested regulations that are essentially unchanged from those agreed to since the 1997–98 hunting year.

The hunting zone for waterfowl is restricted and is described as: the entire length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3 will be open to waterfowl hunting during the 2002–03 season. The length of the Black River east of the Black River/Bonito Creek confluence is closed to waterfowl hunting. All other waters of the reservation would be closed to waterfowl hunting for the 2002–03 season.

For nontribal and tribal hunters, the tribe proposes a continuous duck, coot, merganser, gallinule and moorhen hunting season, with an opening date of October 5, 2002, and a closing date of January 26, 2003. The tribe proposes a daily duck (including mergansers) bag limit of four, which may include no more than two redheads or one canvasback and one redhead, one pintail, and three mallards (including no more than one hen mallard). The daily bag limit for coots, gallinules, and moorhens would be 25, singly or in the aggregate. For geese, the tribe is proposing a season from October 5, 2002, through January 26, 2003. Hunting would be limited to Canada geese, and the daily bag limit would be three.

Season dates for band-tailed pigeons and mourning doves would run concurrently from September 4 through September 18, 2002, in Wildlife Management Unit 10 and all areas south of Y–70 in Wildlife Management Unit 7, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 10, respectively.

Possession limits for the above species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. There would be no open season for sandhill cranes, rails, and snipe on the White Mountain Apache lands under this proposal. A number of special regulations apply to tribal and nontribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

We propose to approve the regulations requested by the tribe for the 2002–03 season.

(cc) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)

On May 17, 2002, the Yankton Sioux Tribe submitted a waterfowl hunting proposal for the 2002–03 season. The Yankton Sioux tribal waterfowl hunting season would be open to both tribal members and nontribal hunters. The waterfowl hunting regulations would apply to tribal and trust lands within the external boundaries of the reservation.

For ducks (including mergansers) and coots, the Yankton Sioux Tribe proposes a season starting October 12, 2002, and running for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be 6 ducks, which may include no more than 5 mallards (no more than 2 hens), 1 canvasback, 2 redheads, 3 scaup, 1 pintail, or 2 wood ducks. The bag limit for mergansers is 5, which would include no more than 1 hooded merganser. The coot daily bag limit is 15.

For geese, the tribe has requested a dark geese (Canada geese, brant, white-fronts) season starting October 26, 2002, and closing January 31, 2003. The daily

bag limit would be three geese (including no more than one whitefront or brant). Possession limits would be twice the daily bag limit. For white geese, the proposed hunting season would start October 26, 2002, and run for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be the same as those adopted by the State of South Dakota.

All hunters would have to be in possession of a valid tribal license while hunting on Yankton Sioux trust lands. Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and the manner of taking. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

During the 2001–02 hunting season, the tribe reported that 79 nontribal hunters took 425 Canada geese, 22 light geese, and 62 ducks. Twenty-two tribal members harvested less than 50 geese and 50 ducks.

We concur with the Yankton Sioux proposal for the 2002–03 hunting season.

Public Comment Invited

We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, desire to obtain the comments and suggestions of the public, other governmental agencies, nongovernmental organizations, and other private interests on these proposals. However, special circumstances are involved in the establishment of these regulations, which limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to adjust appropriately their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow the comment period past the date specified is contrary to the public interest.

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES.** You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, 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 and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in the final rules.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the ''Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)'' was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). A supplement to the final environmental statement, the ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)'' was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). Copies of these documents are available from us at the address indicated under the caption **ADDRESSES.** In addition, an August 1985 Environmental Assessment titled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the same address.

Endangered Species Act Considerations

Prior to issuance of the 2002–03 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemakings.

We will include findings from these consultations in a biological opinion and may cause modification of some regulatory measures proposed in this document. The final rule will reflect any modifications. Our biological opinion resulting from the Section 7 consultation is a public document available for public inspection in the Service's Division of Endangered Species and Division of Migratory Bird Management, U.S. Fish and Wildlife Service, at the address indicated under the caption **ADDRESSES.**

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small

businesses in 1998. Copies of the Analysis are available upon request from the address indicated under the caption **ADDRESSES.**

Executive Order (E.O.) 12866

While this individual supplemental rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866.

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned control number 1018–0023 (expires 07/31/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this proposed rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, 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 have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals contained in this proposed rule, we have consulted with all the tribes affected by this rule.

Energy Effects—E.O. 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this supplemental proposed rule is not expected to significantly affect energy supplies, distribution, or use, this proposed action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Based on the results of soon-to-be-completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 2002,

on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal members or for both tribal and nontribal members may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules (including moorhen), woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks (including mergansers), and geese.

The rules that eventually will be promulgated for the 2002–03 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended. The MBTA authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

Dated: July 18, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–19018 Filed 7–26–02; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Monday,
July 29, 2002

Part V

Department of Education

Disability and Rehabilitation Research Projects (DRRP) Program; Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers (RRTC) Program; Notice

DEPARTMENT OF EDUCATION

Disability and Rehabilitation Research Projects (DRRP) Program

AGENCY: National Institute on Disability and Rehabilitation Research (NIDRR), Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a final priority on Disability in Rural Communities under the Rehabilitation Research and Training Centers (RRTC) Program for the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in FY 2002 and in later years. We take this action to focus research attention on an identified national need. We intend this priority to improve the rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority is effective August 28, 2002.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Description of the Rehabilitation Research and Training Centers (RRTC) Program

The RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge, to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disabling conditions, or promote maximum social and economic independence for persons with disabilities. RRTCs operate in collaboration with institutions of higher education or providers of rehabilitation or other appropriate services. Additional information on the RRTC program can be found at: *http://www.ed.gov/offices/OSERS/NIDRR/Programs/res_program.html#RRTC*

General Requirements

The RRTC must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties;
- Serve as a center for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

This priority reflects issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html*.

The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products*.

We published a notice of proposed priority (NPP) for the Disability in Rural Communities in the **Federal Register** on May 6, 2002 (67 FR 30530). Except for minor revisions there are no differences between the notice of proposed priority (NFP) and this notice of final priority (NFP).

Analysis of Comments and Changes

In response to our invitation in the NPP, six parties submitted comments on the proposed priority. An analysis of the comments and of any changes in the priority since publication of the NPP is published as an appendix at the end of this notice.

Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize us to make under the applicable statutory authority.

The background for the priority was published in the NPP.

Note: This notice does not solicit applications. In any year in which we choose to use this 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)).

Priority

This priority supports one Rehabilitation Research and Training Center on Disability in Rural Communities. The purpose of the priority is to generate new knowledge, through research and development activities, that improves the effectiveness of rehabilitation services. The RRTC project must propose research and development activities that are focused on each of the following areas of inquiry: (1) Rural Employment, and Community and Economic Development Policy; (2) Rural Health and Disability; and (3) Rural Community Transportation.

(1) Rural Employment, and Community and Economic Development Policy:

(a) Identify economic and community development policies and evaluate their impact on the employment status of individuals with disabilities living in rural areas, public and private service delivery systems, and service providers;

(b) Investigate the effectiveness of policies and strategies for addressing existing and emerging problems for individuals with disabilities in rural communities.

(c) Identify and evaluate employment policies and employment strategies, including those used in State vocational rehabilitation systems, and investigate the impact on employment outcomes for individuals with disabilities.

(2) Rural Health and Disability:

(a) Identify and investigate the needs of healthcare providers and health care needs of individuals with disabilities in

rural communities and factors contributing to secondary conditions.

(b) Investigate the impact of inadequate health promotion, wellness, and prevention activities on the health status and disability outcomes for individuals with disabilities, including secondary disabling conditions.

(c) Develop and evaluate health promotion intervention strategies or identify and evaluate effective health promotion strategies for improving health outcomes for individuals with disabilities in rural communities, including an emphasis on prevention of secondary conditions. Investigate the impact of inadequate wellness and health promotion on healthcare service systems in rural communities.

(d) Develop and test training materials for healthcare providers and consumers to enhance knowledge of disability, secondary conditions, and effective wellness and health promotion intervention strategies.

(3) Rural Community Transportation:

(a) Identify or develop and test new transportation ideas and investigate their effectiveness to increase access for individuals with disabilities, and assess whether they are cost effective.

(b) Investigate the impact of alternate means of transportation on disability outcomes, especially employment and health outcomes, and

(c) Identify and investigate the impact of transportation policies, programs, and resource allocations on access and community integration for individuals with disabilities;

In carrying out the purposes of the priority, the RRTC must:

- Disseminate information about disability issues in rural communities;
- Use advances in telecommunications and web-based technologies, where appropriate, to ensure broad access to research results and their practical application; and
- Involve individuals with disabilities, their family members, and consumers, as appropriate, in all stages of the research process and related activities.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Center)

Program Authority: § 29 U.S.C. 762(g) and 764(b)(2).

Dated: July 24, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Analysis of Comments and Changes

Comment: One commenter addressed the need for distance training courses in rural areas for people with disabilities.

Discussion: An applicant could address the need for distance training courses in rural areas for people with disabilities. However, NIDRR has no basis to determine that all applicants should be required to focus on this issue. The peer review process will evaluate the merits of the proposal.

Change: None.

Comment: One commenter stated that it was unclear if the proposed RRTC will be a two-year or a five-year project.

Discussion: The proposed RRTC is a five-year project. The reference to fiscal years 2002–2004 reflects the period of time the priority as written is valid.

Change: None.

Comment: One commenter asked for clarification of the sub-bullets under employment, health, and transportation. The commenter questioned if the items were examples of types of research projects in which NIDRR is interested or mandatory projects to be addressed.

Discussion: As stated in the NPP, NIDRR designates a priority as absolute, competitive preference, or invitational. This priority is absolute. Therefore, the applicant must propose to address each of the specific activities included in the priority.

Change: None.

Comment: One commenter inquired as to whether the emphasis on the term ''policy'' is meant to be a narrow prescription to conduct research on policies only or if it can be interpreted broadly as the continuum from policy formation, through development of strategies to implement policies, and finally the evaluation of the impact of policy.

Discussion: Applicants have the discretion to propose the specific activities that the RRTC will undertake in order to fulfill the purposes of the RRTC as set forth in the priority. Providing this degree of discretion to applicants is an acknowledgement of the various approaches that applicants could take. The peer review process will determine the merits of the suggested activities.

Change: None.

Comment: The priority includes an emphasis on healthcare providers. Given the relative shortage of healthcare providers in many rural and remote areas, exchanging the term ''service provider'' for ''healthcare provider'' would encourage a broader array of potential projects that have the potential of impacting rural residents who live in healthcare shortage areas.

Discussion: An applicant may propose to include the term service providers in conjunction with the term healthcare providers. The peer review process will determine the merits of the suggested activities.

Change: None.

Comment: Two commenters expressed their concerns that independent living (IL) was not included in this priority.

Discussion: An applicant may propose to include service providers, including IL, in the strategies that are developed to address issues. The peer review process will evaluate the merits of the proposal.

Change: None.

Comment: One commenter suggested that the research and development activities include rural housing.

Discussion: An applicant could address rural housing. However, NIDRR has no basis to determine that all applicants should be required to focus on this issue. The peer review process will evaluate the merits of the proposal.

Change: None.

Comment: One commenter inquired as to whether NIDRR intended to expand the responsibilities of the current RRTC or to propose funding for a new RRTC under this proposed priority.

Discussion: NIDRR proposes to fund an applicant, selected through the peer review process, to carry out the research agenda as set forth in this priority. The current RRTC's responsibilities will not be expanded by the priority.

Change: None.

Comment: One commenter inquired as to the definition of the term ''healthcare providers'' and asked if this can be addressed through a traditional medical care model, a social health care model, or a combination of both.

Discussion: Any professional person concerned with the maintenance or restoration of the health of the body or mind could be considered a healthcare provider. The applicant has the discretion to address the scope of this term. The peer review process will evaluate the merits of the proposal.

Change: None.

Comment: One commenter wanted to know if NIDRR had given any consideration to transportation issues affecting individuals with disabilities living in remote areas where there are no roads and where communities are only accessible by air.

Discussion: Applicants can address transportation needs of individuals with disabilities living in remote areas in the Rural

Community Transportation priority area. The peer review process will evaluate the merits of the proposal.

Change: None.

[FR Doc. 02–19119 Filed 7–26–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers (RRTC) Program; Notice Inviting Applications for Fiscal Year (FY) 2002

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions you need to apply for a grant under this competition.

Purpose of the Program: The purpose of the RRTC Program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973 (the Act), as amended.

For FY 2002 the competition for new awards focuses on projects designed to meet the priorities we describe in the *Priorities* section of this application notice. The priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Application Available: July 29, 2002.

Deadline for Transmittal of Applications: September 12, 2002.

Maximum Award Amount: $600,000.

Note: We will reject any application that proposes a budget exceeding $600,000 for a single budget period of 60 months.

Estimated Number of Awards: 1.

Project Period: Up to 60 months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86, and 97, and (b) The program regulations 34 CFR part 350.

Priority

This competition focuses on a project designed to meet the priority in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

For FY 2002, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

Selection Criteria

We use the following selection criteria to evaluate applications under this program.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

An additional 10 points may be earned by an applicant depending on how well the additional selection criterion elsewhere in this notice is met.

(a) Responsiveness to an Absolute or Competitive Priority (4 Points)

(1) The Secretary considers the responsiveness of the application to an absolute or competitive priority published in the **Federal Register**.

(2) In determining the application's responsiveness to the absolute or competitive priority, the Secretary considers the extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority.

(b) Importance of the Problem (9 Points Total)

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of one or more disabled populations (3 points).

(iii) The extent to which the proposed activities address a significant need of rehabilitation service providers (3 points).

(c) Design of Research Activities (35 Points Total)

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (5 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (5 points); and

(E) The data analysis methods are appropriate (5 points).

(i) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (5 points).

(d) Design of Training Activities (11 points Total)

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (2 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (2 points).

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project (1 point).

(iv) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (2 points).

(v) The extent to which the proposed training materials and methods are

accessible to individuals with disabilities (1 point).

(vi) The extent to which the applicant is able to carry out the training activities, either directly or through another entity (2 points).

(e) Design of Dissemination Activities (8 Points Total)

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (1 point).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (1 point).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(f) Design of Technical Assistance Activities (4 Points Total)

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (1 point).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (1 point).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (1 point).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (1 point).

(g) Plan of Operation (4 Points Total)

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(h) Collaboration (2 Points Total)

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicants proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(i) Adequacy and Reasonableness of the Budget (4 Points Total)

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(j) Plan of Evaluation (7 Points Total)

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(k) Project Staff (8 Points Total)

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(l) Adequacy and Accessibility of Resources (4 points)

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (2 points).

(ii) The extent to which the facilities, equipment, and other resources are

appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (2 points).

Additional Selection Criterion (10 points)

We use the following additional criterion to evaluate applications under each priority.

Up to 10 points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under these absolute priorities. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities. Thus, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for these priorities. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Application Procedures

The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (*See* 34 CFR 75.104(b)).

The Secretary strongly recommends the following:

(1) A one-page abstract;

(2) An Application Narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more 125, numbered, double-spaced (no more than 3 lines per vertical inch) 8″x 11″ pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(3) A font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmitting Applications

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(a) If You Send Your Application by Mail

You must mail the original and two copies of the application on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Mail your application to: U. S. Department of Education, Application Control Center, Attention: (CFDA # 84.133B), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(b) If You Deliver Your Application by Hand

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.133B), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

Notes

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

Application Forms and Instructions

The Appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, and various assurances and certifications. Please organize the parts and additional materials in the following order:

- Part I: Application for Federal Assistance (ED 424 (Rev. 11/30/2004)) and instructions.
- Part II: Budget Form—Non-Construction Programs (ED 524) and instructions and definitions.
- Part III: Application Narrative.
- Part IV: Additional Materials
- Estimated Public Reporting Burden.
- Assurances—Non-Construction Programs (Standard Form 424B).
- Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)
- Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *Donna.Nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under *For Further Information Contact.*

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Dated: July 24, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection of information is 1820–0027. Expiration date: 2/28/2003. We estimate the time required to complete this collection of information to average 30 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651. If you have comments or concerns regarding the status of your submission of this form, write directly to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645.

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this section. Applicants are required to submit an original and two copies of each application as provided in this section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application. An applicant for an RRTC is limited to an indirect rate of 15%. An applicant for a DRRP should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting My Application Can I Find Out if It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out if My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider

submitting similar applications in future competitions.

BILLING CODE 4000–01–P

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number ☐☐☐☐☐☐☐☐☐

3. Applicant's T-I-N ☐☐-☐☐☐☐☐☐☐

4. Catalog of Federal Domestic Assistance #: 8 4 ☐☐☐☐
Title: _____
_____

5. Project Director: _____
Address: _____
_____
City _____ State _____ ZIP Code + 4 _____
Tel. #: _____ Fax #: _____
E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No

7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

8. Type of Applicant (Enter appropriate letter in the box.) ☐

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:
—PreApplication
☐ Construction
☐ Non-Construction
—Application
☐ Construction
☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)

b. Title

c. Tel. #: _____ Fax #: _____

d. E-Mail Address:

e. Signature of Authorized Representative _____ Date: _____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

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Approved by OMB
0348-0046

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1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
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[FR Doc. 02–19120 Filed 7–26–02; 8:45 am]
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Federal Register

Monday,
July 29, 2002

Part VI

Department of State

Culturally Significant Objects Imported for Exhibition Determinations: "Greuze the Painter: Los Angeles Works in Context"; Notice

DEPARTMENT OF STATE

[Public Notice 4073]

Culturally Significant Objects Imported for Exhibition Determinations: ''Greuze the Painter: Los Angeles Works in Context''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Greuze the Painter: Los Angeles Works in Context,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Museum in Los Angeles, from on or about September 10, 2002 to on or about December 1, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Orde F. Kittrie, Attorney-Adviser, Office of the Legal Adviser, Department of State (telephone: 202/619–5078). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 23, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–19235 Filed 7–26–02; 8:53 am]

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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.

H.R. 2362/P.L. 107–202

Benjamin Franklin Tercentenary Commission Act (July 24, 2002; 116 Stat. 739)

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To provide for an independent investigation of Forest Service firefighter deaths that are caused by wildfire entrapment or burnover. (July 24, 2002; 116 Stat. 744)

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

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