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Presidential Documents

Title 3—

The President

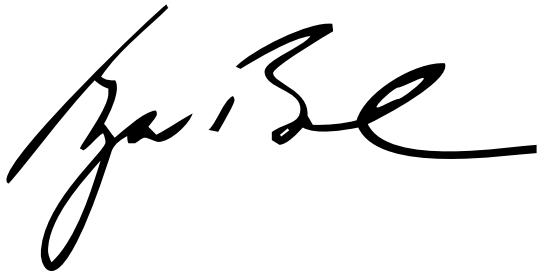
Presidential Determination No. 2002–28 of August 14, 2002

Presidential Determination on Military Drawdown for Tunisia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by the Constitution and laws of the United States, including title III (Foreign Military Financing) of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115), I hereby direct the drawdown of defense articles and services from the stocks of the Department of Defense, and military education and training of the aggregate value of $5 million for Tunisia, for the purposes of part II of the Foreign Assistance Act of 1961, as amended.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, August 14, 2002.

[FR Doc. 02–21554
Filed 8–21–02; 8:45 am]
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Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV02–920–3 IFR]

Kiwifruit Grown in California; Relaxation of Pack and Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises pack and container requirements currently prescribed for California kiwifruit under the California kiwifruit marketing order (order). The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule increases the number of pieces of fruit per 8-pound sample for three size designations and decreases the number of individual pieces of fruit per 8-pound sample for one size designation, revises lot stamping requirements for plastic containers, suspends the standard packaging requirement for volume filled containers of kiwifruit designated by weight for the 2002–03 season, and removes obsolete language from the text of the regulation. These changes were unanimously recommended by the Committee and are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve grower returns.

DATES: Effective August 23, 2002. Comments received by October 21, 2002 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920 as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises container and pack requirements currently prescribed for California kiwifruit under the order. This rule increases the number of pieces of fruit per 8-pound sample for three size designations and decreases the number of individual pieces of fruit per 8-pound sample that handlers can pack for one size designation, revises lot stamping requirements for plastic containers, suspends the standard packaging requirement for volume filled containers of kiwifruit designated by weight for the 2002–03 season, and removes obsolete language from the text of the regulation. These changes were unanimously recommended by the Committee and are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve grower returns. The Committee unanimously recommended these changes at its April 9, 2002, meeting.

Numerical Count Size Designations

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements.

Section 920.52 authorizes the establishment of pack requirements. Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iii) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume filled, or bulk containers.

The amount of kiwifruit supplied to the domestic market by California

handlers has declined 40 percent since the 1992–93 season, while imports from Europe have increased 1,409 percent. During the 2000–01 season approximately 3.2 million tray equivalents were imported from Europe. Imports from Europe are in direct competition with California kiwifruit. Additionally, grower prices have steadily declined in spite of a continuous increase in the U.S. per capita consumption of kiwifruit. When the order was implemented in 1984, the average Free-on-Board (FOB) value was $1.14 per pound. A recent review of FOB values showed that the average FOB value for the 1992–93 season through the 1999–2000 season was $0.56 per pound, a decline of $0.58 per pound.

As previously mentioned, the rules and regulations specify a maximum number of fruit per 8-pound sample for each numerical count size designation for kiwifruit packed in bags, volume filled, or bulk containers. California and imported fruit size designations by weight have differed since the implementation of the order. In 1998, the Committee addressed these differences by revising the numerical count per size designation specified in § 920.302(a)(iv) of the order's administrative rules and regulations. An interim final rule published in the **Federal Register** on September 3, 1998 (63 FR 46861), increased the number of fruit that could be packed per 8-pound samples of size designations 30 through 42. A final rule concerning this matter was published in the **Federal Register** on July 29, 1999 (64 FR 41010).

Buyers generally prefer to purchase containers with a greater number of pieces of fruit in the box. Therefore, at its September 19, 2001, meeting, the Committee again addressed the differences in size designations between California kiwifruit and imported kiwifruit and unanimously recommended relaxing pack requirements under § 920.302(a)(iii) to permit handlers to pack more individual pieces of fruit in an 8-pound sample for various sizes.

The Committee unanimously recommended increasing the maximum number of fruit per 8-pound sample for sizes 42 through 25, eliminating size 21, and adding new sizes 20 and 23. These changes as shown in the following chart were implemented through an interim final rule (66 FR 1413, October 29, 2001) and a final rule (67 FR 11396, March 14, 2002). Changes are in bold.

Size designation	Maximum number of fruit per 8-pound sample
20	**27**
23	**29**
25	**32**
27/28	**35**
30	**38**
33	**43**
36	**45**
39	**49**
42	**54**
45	55

This chart is commonly referred to as the ''Size Designation Chart'' in the industry. Increasing the maximum number of fruit per 8-pound sample allowed some smaller-sized fruit to be packed into a larger-size category. This change allowed one more piece of fruit to be packed per 8-pound sample in sizes 42 and 39, three more pieces of fruit to be packed in size 36, seven more pieces of fruit to be packed in size 33, and five more pieces of fruit to be packed in sizes 27/28 and 25.

Increasing the maximum number of fruit permitted per 8-pound samples during the 2001–02 season enabled handlers to better meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold.

The changes to the size designation chart have helped reduce the sizing differences between California and imported kiwifruit during the 2001–02 season and allowed more fruit to be sold; however, handlers found that adjustments are still needed in some of the size designations to bring them closer to imported fruit size designations and to allow more accurate sorting into the size categories with handler sizing equipment. Sizing equipment had difficulty during the 2001–02 season distinguishing between sizes.

Therefore, at its April 9, 2002, meeting, the Committee unanimously recommended increasing the maximum number of fruit per 8-pound sample for sizes 23, 30, and 36, and reducing the maximum number of fruit per 8-pound sample for size 42. The maximum number of fruit allowed in size 23 will be increased from 29 pieces of fruit per 8-pound sample to 30 pieces; in size 30, 39 pieces of fruit will be allowed instead of 38 pieces; in size 36, 46 pieces of fruit will be allowed instead of 45; and in size 42, the number of fruit allowed will be decreased from 54 pieces of fruit per 8-pound sample to 53 pieces. These recommended changes are shown in the following chart. Recommended changes are shown in bold.

Size designation	Maximum number of fruit per 8-pound sample	
20	27	
23	29	**30**
25	32	
27/28	35	
30	38	**39**
33	43	
36	45	**46**
39	49	
42	54	**53**
45	55	

The Committee believes that increasing the number of fruit permitted per 8-pound samples of sizes 23, 30, and 36, and decreasing the number of fruit per 8-pound sample for size 42 will result in more clearly defined size categories, and allow sizing equipment to more uniformly separate fruit of different sizes. Additionally, these adjustments will make the four size designations more similar to those for imported fruit. This action will not affect import requirements.

Lot Stamping Requirements

Section 920.52 of the order authorizes the establishment of container requirements. Section 920.55 of the order requires inspection and certification of kiwifruit, handled by handlers.

Section 920.303(d) requires all exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector. It further requires that individual consumer packages of kiwifruit placed directly on a pallet have all outside or exposed packages on a pallet plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or have one inspection label placed on each side of the pallet. However, kiwifruit packed into individual consumer packages within a master container that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service (inspection service) are exempted from the lot stamp number requirement.

The lot stamp number is used by the inspection service to identify and locate the corresponding inspector's working papers or notes. Working papers are the documents each inspector completes while performing an inspection on a lot of kiwifruit.

During the 2001 season, the kiwifruit industry began using plastic containers of various dimensions that can hold either bulk or tray packed kiwifruit. Some of these containers are reusable. Kiwifruit packed in reusable plastic containers (RPCs) is typically delivered to the retailer, where the containers are emptied and returned to the clearinghouse for cleaning and redistribution. As RPCs do not support markings that are permanently affixed to the container, all markings must be printed on cards, which slip into tabs on the front or sides of the containers. The cards are easily inserted and removed and contribute to the efficient use of the container. Because of their unique portability, the industry and inspection service are concerned that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers, enabling a handler to avoid inspection on a lot or lots of kiwifruit.

The industry experimented last season with round adhesive labels on RPCs. The lot stamp number was stamped on the round adhesive label and placed on the RPCs; however, manufacturers found that it was difficult to remove the adhesive label in the wash cycle. Additionally, handlers found that increased labor was needed to affix the adhesive labels and lot stamp number to the plastic containers. Handler members calculated that affixing adhesive labels to RPCs and one-way plastic containers cost the kiwifruit industry approximately $0.10 per container in materials and labor.

The inspection service and the Committee have presented their concerns to the manufacturers of these types of containers. One manufacturer has indicated a willingness to address the problem by offering an area on the principal display panel where the container markings will adhere to the plastic container. However, the manufacturer believes that this change may not be feasible in the near future.

To address the additional time and cost of affixing adhesive labels to containers, the Committee unanimously recommended that handlers be allowed to use any method of positive lot identification (PLI) in accordance with Federal or Federal-State Inspection Service (inspection service) procedures. The Committee estimated that allowing handlers to use any method of PLI acceptable to inspection service will reduce handler costs by $8,700, and will make handler operations more efficient. This action will not affect import requirements.

Standard Packaging for Volume Filled Containers Designated by Weight

Section 920.52 authorizes the establishment of pack requirements. Paragraphs (1) and (3) of § 920.52 specify that the USDA may fix the weight of containers used in the handling of kiwifruit.

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(v) requires that all volume filled containers of kiwifruit designated by weight shall hold 22-pounds (10-kilograms) net weight of kiwifruit unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit.

In a volume filled container, fairly uniform size kiwifruit are loosely packed without cell compartments, cardboard fillers or molded trays. Handlers may ship volume filled containers marked by either the appropriate count or net weight of kiwifruit. Handler shipments are based upon the preference of the receiver.

In 1994, the Committee unanimously recommended and USDA established standard packaging for certain volume filled containers designated by weight. At that time 52 percent of the total crop was packed into volume filled containers. The percentage of the total crop packed into volume filled containers increased to 85 percent during the 2001–02 season. In 2001–02, imports from the Northern hemisphere (Greece, Italy, and France) totaled approximately 17 percent of the U.S. market share. The majority of imported kiwifruit was shipped in 19.8-pound (9-kilogram) volume filled containers, whereas the order limits California handlers to 22-pound (10-kilogram) net weight volume filled containers. Retailers do not differentiate between an imported 19.8-pound (9-kilogram) and a 22-pound (10-kilogram) net weight volume filled container from California. Because buyers pay the same price for each container, the affect is not favorable for California handlers.

Section 920.302(a)(4)(v) requires handlers to utilize a standard packaging of 22-pounds (10-kilograms) net weight for volume filled containers that are over 10-pounds or less than 35-pounds net weight of kiwifruit. This restriction limits California kiwifruit handlers in meeting buyer's demands for other types of packaging.

Therefore, at its April 9, 2002, meeting, the Committee unanimously recommended suspending the standardized packaging requirement of 22-pounds (10-kilograms) net weight for volume filled containers for the 2002–03 season. The Committee expects that this suspension will enable California handlers to meet packaging demands of the retailer for volume filled containers, make California kiwifruit more competitive by allowing handlers to match other packaging styles, and reduce handlers' packaging costs. This change will not affect the import regulation.

Removal of Obsolete Language

Paragraphs (a) and (b) of § 920.60 authorize reporting requirements for kiwifruit handlers under the marketing order.

Section 920.160 requires each handler who ships kiwifruit to file a report of shipment and inventory data to the Committee no later than the fifth day of the month following such shipment. Handlers who ship less than 10,000 trays or the equivalent thereof, per fiscal year, and who have qualified with the Committee are only required to furnish such report of shipment and inventory data twice each year. Paragraphs (a)(1) through (a)(6) of § 920.160 specify the types of information to be provided on the shipment report. Paragraph (a)(4) requires handlers to report inventory at the end of the reporting period by container; paragraph (a)(5) requires handlers to report the amount of kiwifruit lost in repack; and paragraph (a)(6) requires handlers to report the amount of fruit set aside for processing.

The Committee has not been collecting this information from handlers since the early 1990's. Therefore, the Committee unanimously recommended removing these obsolete reporting requirements from § 920.160 of the order's rules and regulations at the April 9, 2002, meeting.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 52 handlers of California kiwifruit subject to

regulation under the marketing order and approximately 326 growers in the production area. Small agricultural service firms are defined as those whose annual receipts are less than $5,000,000, and small agricultural growers are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $750,000. None of the 52 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. Two of the 326 growers subject to regulation have annual sales of at least $750,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This rule invites comments on revisions to container and pack requirements prescribed under the California kiwifruit order. This rule increases the number of pieces of fruit per 8-pound sample for three size designations and decreases the number of pieces of fruit per 8-pound sample for one size designation, revises lot stamping requirements for plastic containers, suspends the standard packaging requirement for volume filled containers of kiwifruit designated by weight for the 2002–03 season, and removes obsolete language contained in paragraphs (a)(4), (a)(5), and (a)(6) of § 920.160 that has not been applicable for several years. The Committee unanimously recommended these changes at its April 9, 2002, meeting. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve grower returns. Authority for these actions is provided in §§ 920.52, 920.55, and 920.60 of the order.

Numerical Count Size Designations

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements.

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iii) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume filled, or bulk containers.

The amount of kiwifruit supplied to the domestic market by California handlers has declined 40 percent since the 1992–93 season, while imports from Europe have increased 1,409 percent. During the 2000–01 season approximately 3.2 million tray equivalents were imported from Europe. Imports from Europe are in direct competition with California kiwifruit. Additionally, grower prices have steadily declined in spite of a continuous increase in the U.S. per capita consumption of kiwifruit. When the order was implemented in 1984, the average Free-on-Board (FOB) value was $1.14 per pound. A recent review of FOB values showed that the average FOB value for the 1992–93 season through the 1999–2000 season was $0.56 per pound, a decline of $0.58 per pound.

As previously mentioned, the rules and regulations specify a maximum number of fruit per 8-pound sample for each numerical count size designation for kiwifruit packed in bags, volume filled, or bulk containers. California and imported fruit size designations by weight have differed since the implementation of the order. In 1998 the Committee addressed these differences by revising the numerical count per size designation specified in § 920.302(a)(iv) of the order's administrative rules and regulations. An interim final rule published in the **Federal Register** on September 3, 1998 (63 FR 46861), increased the number of fruit that could be packed per 8-pound samples of size designations 30 through 42. A final rule concerning this matter was published in the **Federal Register** on July 29, 1999 (64 FR 41010).

Buyers generally prefer to purchase containers with a greater number of pieces of fruit in the box. Therefore, at its September 19, 2001, meeting, the Committee again addressed the differences in size designations between California kiwifruit and imported kiwifruit and unanimously recommended relaxing pack requirements under § 920.302(a)(iii) to permit handlers to pack more individual pieces of fruit in an 8-pound sample for various size designations, and, thus, better meet buyer preferences.

The Committee unanimously recommended increasing the maximum number of fruit per 8-pound sample for sizes 42 through 25, eliminating size 21, and adding new sizes 20 and 23. These changes, as shown in the following chart, were implemented through an interim final rule (66 FR 1413, October 29, 2001), and finalized by a final rule (67 FR 11396, March 14, 2002). Changes are shown in bold.

Size designation	Maximum number of fruit per 8-pound sample
20	**27**
23	**29**
25	**32**
27/28	**35**
30	**38**
33	**43**
36	**45**
39	**49**
42	**54**
45	55

This chart is commonly referred to as the ''Size Designation Chart'' in the industry. Increasing the maximum number of fruit per 8-pound sample allowed some smaller-sized fruit to be packed into a larger-size category. This change allowed one more piece of fruit to be packed per 8-pound sample in sizes 42 and 39, three more pieces of fruit to be packed in size 36, seven more pieces of fruit to be packed in size 33, and five more pieces of fruit to be packed in sizes 27/28 and 25.

Increasing the maximum number of fruit permitted per 8-pound samples during the 2001–02 season enabled handlers to better meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold.

The changes to the size designation chart helped reduce the sizing differences between California and imported kiwifruit during the 2001–02 season and allowed more fruit to be sold. However, handlers find that adjustments are still needed in some of the size designations to bring them closer to imported fruit size designations and to allow more accurate sorting into the size categories with handler sizing equipment. Sizing equipment had difficulty during the 2001–02 season distinguishing between sizes.

Therefore, at its April 9, 2002, meeting, the Committee unanimously recommended increasing the maximum number of fruit per 8-pound sample for sizes 23, 30, and 36, and reducing the maximum number of fruit per 8-pound sample for size 42. Size 23 will be increased from 29 pieces of fruit per 8-pound sample to 30 pieces, size 30 will be increased from 38 pieces of fruit per 8-pound sample to 39 pieces of fruit, size 36 will be increased from 45 pieces of fruit per 8-pound sample to 46 pieces, and size 42 will be decreased from 54 pieces of fruit per 8-pound sample to 53 pieces. These recommended changes are shown in the following chart in bold.

Size designation	Maximum number of fruit per 8-pound sample	
20	27	
23	29	**30**
25	32	
27/28	35	
30	38	**39**
33	43	
36	45	**46**
39	49	
42	54	**53**
45	55	

The Committee believes that increasing the number of fruit permitted per 8-pound samples of sizes 23, 30, and 36, and decreasing the number of fruit in 8-pound samples for size 42 will result in more clearly defined size categories and allow sizing equipment to more uniformly separate fruit of different sizes. Additionally, these adjustments will make the four size designations more similar to those for imported fruit. This action will not affect import requirements.

The Committee discussed alternatives to these changes. It considered suspending the size designation chart to lower inspection costs and allow handlers to pack similar to imports. However, it did not adopt this option because it concluded inspection costs will not be significantly lowered and because a recent grower survey showed that uniform sizing is one of the most important issues to the California kiwifruit growers.

Another suggestion presented was to leave the size designation chart unchanged. The Committee did not adopt this suggestion because it believes that handlers will benefit from the revised numerical counts for sizes 23, 30, 36, and 42.

After considering these alternatives, the Committee recommended relaxing the pack requirements for three sizes and tightening the pack requirements for one size. Small and large growers and handlers are expected to benefit from these changes. A reasonable crop estimate for the 2002–03 season is 7.5 million tray equivalents. The average FOB value for the 2001–02 season is estimated to be $3.50 per tray equivalent. The Committee estimated that the changes to the numerical count for size designations 23, 30, 36 and 42 will increase the average FOB value for the 2002–03 season to $3.75 per tray equivalent. It is anticipated that the FOB value for the 2002–03 season will increase by $1,875,000 ($3.75—$3.50 x 7,500,000 tray equivalents). This change will not affect the minimum size and will not allow fruit currently considered ''undersized'' to be shipped. These changes will not affect import requirements. These changes are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve grower returns.

Lot Stamping Requirements

Section 920.303 (d) requires all exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector. It further requires that individual consumer packages of kiwifruit placed directly on a pallet have all outside or exposed packages on a pallet plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or have one inspection label placed on each side of the pallet. However, kiwifruit packed into individual consumer packages within a master container that are being directly loaded into a vehicle for export shipment under the supervision of the inspection service is exempted from the lot stamp number requirement. The lot stamp number is used by the inspection service to identify and locate the corresponding inspector's working papers or notes. Working papers are the documents each inspector completes while performing an inspection on a lot of kiwifruit and the information in the working papers is used by the inspector to determine the grade of the inspected lot.

During the 2001 season, the kiwifruit industry began using plastic containers of various dimensions that can hold either bulk or tray packed kiwifruit. Some of these containers are reusable. Kiwifruit packed in reusable plastic containers (RPCs) is typically delivered to the retailer where the containers are emptied and returned to the clearinghouse for cleaning and redistribution. As RPCs do not support markings that are permanently affixed to the container, all markings must be printed on cards, which slip into tabs on the front or sides of the containers. The cards are easily inserted and removed and further contribute to the efficient use of the container. Because of their unique portability, the industry and inspection service are concerned that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers, enabling a handler to avoid inspection on a lot or lots of kiwifruit.

The industry experimented last season with round adhesive labels on RPCs. The lot stamp number was stamped on the round adhesive label and placed on the RPCs; however, manufacturers found that it was difficult to remove the adhesive label in the wash cycle. Additionally, handlers found that increased labor was needed to affix the adhesive labels and lot stamp number to the plastic containers. Handler members calculated that affixing adhesive labels to RPCs and one-way plastic containers cost the kiwifruit industry approximately $0.10 per container in materials and labor. The inspection service and the Committee have presented their concerns to the manufacturers of these types of containers. One manufacturer has indicated a willingness to address the problem by offering an area on the principal display panel where the container markings will adhere to the plastic container. However, this change may not be feasible in the near future.

To address the additional time and cost of affixing adhesive labels to containers, the Committee unanimously recommended that handlers be allowed to use any method of PLI in accordance with Federal or Federal-State Inspection Service (inspection service) procedures. The Committee estimated that allowing handlers to use any method of PLI acceptable to the inspection service will reduce handler costs by $8,700, and will make handler operations more efficient. This action will not affect import requirements.

The Committee discussed alternatives to this change including not changing the lot stamp requirements for plastic containers. After considering this alternative, the Committee recommended relaxing the container marking requirements provided that plastic containers meet any approved method of PLI. The Committee believes that handlers and growers will benefit from such a relaxation. This change is expected to help handlers compete more effectively in the marketplace and to improve grower returns. This action will not affect import requirements.

Standard Packaging for Volume Filled Containers Designated by Weight

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302 (a)(4)(v) requires that all volume filled containers of kiwifruit designated by weight shall hold 22-pounds (10-kilograms) net weight of kiwifruit unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit.

In a volume filled container, fairly uniform size kiwifruit are loosely packed without cell compartments, cardboard fillers or molded trays. Handlers may ship volume filled containers marked by either the appropriate count or net weight of kiwifruit. Handler shipments are based upon the preference of the receiver.

In 1994, the Committee unanimously recommended, and USDA established standard packaging for certain volume filled containers packed by weight. At that time, 52 percent of the total crop was packed into volume filled containers. The percentage of the total crop packed into volume filled

containers increased to 85 percent during the 2001–02 season. In 2001–02, imports from the Northern Hemisphere (Greece, Italy, and France) totaled approximately 17 percent of the U.S. market share. The majority of imported kiwifruit was shipped in 19.8-pound (9-kilogram) volume filled containers, whereas the order limits California handlers to 22-pound (10-kilogram) net weight volume filled containers. Retailers do not differentiate between an imported 19.8-pound (9-kilogram) and 22-pound (10-kilogram) net weight volume filled container from California. Because buyers pay the same price for each container, the effect is not favorable for California handlers.

Section 920.302(a)(4)(v) requires handlers to utilize a standard 22-pound (10-kilogram) net weight standard packaging for volume filled containers that are over 10-pounds or less than 35-pounds net weight. This restriction limits California kiwifruit handlers in meeting buyer's demands for other types of packaging.

Therefore, at its April 9, 2002, meeting, the Committee unanimously recommended suspending the standard 22-pound (10-kilogram) net weight packaging requirement for volume filled containers designated by weight for the 2002–03 season. The Committee expects that this suspension will enable California handlers to meet packaging demands of the retailer for volume filled containers; make California kiwifruit more competitive with imports by allowing handlers to pack similar to imports; and reduce handlers' packaging costs. This change will not impact import requirements.

The Committee discussed alternatives at the April 9, 2002, meeting. One Committee member suggested leaving the standard packaging requirement unchanged. However, the Committee believes that relaxing the standard packaging requirement of 22-pound (10-kilogram) net weight for volume filled containers designated by weight will allow handlers the flexibility to meet buyer container preferences and to increase sales.

The Committee considered other alternatives to revising packing and container requirements; but determined that these suggestions will not adequately address the industry problems.

Removal of Obsolete Language

Paragraphs (a) and (b) of § 920.60 authorize reporting requirements for kiwifruit handlers under the marketing order.

Section 920.160 requires each handler who ships kiwifruit to file a report of shipment and inventory data to the Committee no later than the fifth day of the month following such shipment. Handlers who ship less than 10,000 trays or the equivalent thereof, per fiscal year, and who have qualified with the Committee are only required to furnish such report of shipment and inventory data twice each year. Paragraphs (a)(1) through (a)(6) of § 920.160 specify the types of information to be provided on the shipment report. Paragraph (a)(4) requires handlers to report inventory at the end of the reporting period by container; paragraph (a)(5) requires handlers to report the amount of kiwifruit lost in repack; and paragraph (a)(6) requires handlers to report the amount of fruit set aside for processing.

The Committee has not been collecting this information from handlers since the early 1990's. Therefore, the Committee unanimously recommended removing these obsolete reporting requirements from § 920.160 of the order's rules and regulations at the April 9, 2002, meeting. It is estimated that the handler burden will not be impacted, as the current shipment report form approved by the Office of Management and Budget (OMB) under OMB No. 0581–0189 does not contain these data elements.

This rule will relax pack and container requirements under the kiwifruit order. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

In addition, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 9, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on revisions to pack and container requirements currently prescribed under the California marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C., it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes pack and container requirements; (2) the 2002–2003 harvest is expected to begin during September and this relaxation should be in place as soon as possible to enable handlers to make operational decisions and to cover as much of the harvest as possible; (3) the Committee unanimously recommended these changes to provide handlers more marketing flexibility at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 920.160 [Amended]

2. In § 920.160, paragraphs (a)(4), (a)(5), and (a)(6) are removed.

3. In § 920.302, paragraph (a)(4)(v) is suspended beginning with August 23, 2002 through July 31, 2003, and the table in paragraph (a)(4)(iii) is revised to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *

(4) * * *

(iii) * * *

Column 1 size designation	Column 2 maximum number of fruit per 8 pound sample
20	27
23	30
25	32
27/28	35
30	39
33	43
36	46
39	49
42	53
45	55

* * * * *

4. In § 920.303, paragraph (d) is revised to read as follows:

§ 920.303 Container marking regulations.

* * * * *

(d) All exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except for individual consumer packages within a master container and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service. Individual consumer packages of kiwifruit placed directly on a pallet shall have all outside or exposed packages on a pallet plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or have one inspection label placed on each side of the pallet. Plastic containers of kiwifruit, placed on a pallet, shall be positive lot identified (PLI) in accordance with Federal or Federal-State Inspection Service procedures and shall have required information on the cards of the individual containers, as provided in this section of the regulations.

* * * * *

Dated: August 16, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–21364 Filed 8–19–02; 10:25 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–387–AD; Amendment 39–12854; AD 2002–16–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777 series airplanes, that requires modification of the supports for the wire bundles of the fuel quantity indicator system (FQIS), and follow-on actions, if necessary. The actions specified by this AD are intended to prevent chafing of the FQIS wiring on surrounding structures and systems. Such chafing could result in exposure of the bare conductor in close proximity to structures or other electrically conductive return paths, and potential electrical arcing and explosion in the fuel tank in the event of an additional wiring failure outside the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Effective September 26, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 26, 2002.

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

FOR FURTHER INFORMATION CONTACT: John Vann, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1024; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes was published in the **Federal Register** on July 25, 2001 (66 FR 38588). That action proposed to require modification of the supports for the fuel quantity indicator system (FQIS) wire bundles.

Comments

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

Request To Withdraw Proposed Rule

One commenter states that the change proposed by the FAA has already been addressed by the manufacturer, per the release of the service bulletins referenced in the proposed rule that specify inspecting the in-tank wiring and revising the installation to enhance the wire separation from the in-tank structure. The commenter adds that, in testing where there was the potential for wire chafing from fuel sloshing and vibration, and during inspections, wire chafing was not found. The commenter states that chafed fuel quantity indicator system (FQIS) wiring, in combination with certain wiring or component failures, resulting in a potential ignition source, is improbable because of the safety design features that preclude such an occurrence. The commenter notes several reasons that the actions in the proposed rule are not necessary. First, the FQIS processor on Model 777 series airplanes is designed to meet electrical unit intrinsic safety levels, per the manufacturer's requirements. Second, the FQIS wiring has an outer insulation jacket, then a double-braided shield for protection, and each wire has its own insulation jacket. Third, for 70 percent of the distance from the processor to the wing spar, the FQIS wiring has a spatial separation from other airplane wiring. Fourth, the in-tank wiring conductor is nickel-plated, which, per in-service data, is proven to be resistant to fuel tank corrosion.

The FAA infers that the commenter wants the proposed rule withdrawn. We do not agree. We have conducted many inspections of the fuel tanks on Model 777 series airplanes, and have found that the current wiring installation design is highly sensitive to wiring installation quality, such that the level of installation quality control necessary to prevent chafing is unrealistic. In addition, other factors such as fuel sloshing, airplane flexure, inertial loads, and fuel tank maintenance can cause the wiring to move into positions where chafing can occur. The modifications specified in the referenced service bulletins provide the necessary improvements to prevent chafing of the

FQIS wiring. Additionally, although the commenter stated that chafed wiring, in combination with certain wiring or component failures, would not result in a potential ignition source, we do not agree. The design features of the FQIS cannot ensure that, over the lifetime of the airplane, sufficient energy will not cause electrical arcing from entering the fuel tank.

The same commenter asks that, if the proposed rule is adopted as final, it be changed to reference subsequent revisions of the referenced service bulletins for accomplishment of the specified actions.

We do not agree with the commenter. An AD may only refer to service documents that are submitted and approved by the Office of the Federal Register for ''incorporation by reference.'' In order for operators to use later revisions of the referenced document (issued after the publication of the AD), either the AD must be revised to refer to the specific later revisions, or operators must request approval for the use of them as an alternative method of compliance with this AD under the provisions of paragraph (c) of this AD. No change to the final rule is necessary in regard to the previous comments.

Extend Compliance Time

One commenter asks that the compliance time specified in the proposed rule be extended from 24 to 48 months. The commenter states that the airlines should be allowed to schedule incorporation of the modifications at a convenient heavy maintenance check if the specified safety procedures are in place and no evidence of chafing is found during testing or incorporation of the modifications.

We do not agree with the commenter. The commenter provides no technical justification for increasing the compliance time as requested. Further, the areas where the wiring concerns being remedied by this AD are regularly exposed to flammable fuel vapors. Arcing in the tank can cause ignition of these flammable fuel vapors. In light of this, and since the unsafe condition addressed by this AD is a significant safety issue, we have determined that the compliance time of 24 months, as proposed, is warranted.

In developing an appropriate compliance time for the actions required by this AD, we considered not only those safety issues, but the manufacturer's recommendations, parts availability, and the practical aspect of accomplishing the modifications within an interval paralleling normal scheduled maintenance for the majority of affected operators. In light of all of these factors described previously, we consider 24 months to be an appropriate compliance time wherein safety will not be adversely affected. No change to the final rule is necessary in this regard.

Eliminate Reporting Requirement

One commenter asks that the reporting requirement included in paragraph (b) of the proposed rule be eliminated. The commenter states that at the time it accomplished the specified modifications, the referenced service bulletins did not include formal procedures or steps for inspection of the damaged wire. Therefore, the commenter did not include those steps in its internal documentation and cannot compile the information for the reporting requirement. The commenter notes that to comply it would have to re-inspect the wiring that has already been modified on all affected airplanes. This would include unscheduled fuel tank entries, which would not take place during a normal maintenance visit and would have a significant financial impact on the airlines.

We partially agree with the commenter, but we do not agree to eliminate paragraph (b) of the final rule. However, we agree that if operators have accomplished the modifications required by paragraph (a) of the final rule, they should not have to re-enter the fuel tank to obtain the information necessary for the reporting requirement submission. Therefore, we have revised paragraph (b)(2) of the final rule to require submission of a report of findings from the previously completed fuel tank modification within 60 days after the effective date of this final rule.

Explanation of Change to Final Rule

The FAA finds that the follow-on actions (Replacement and Reporting of Damaged Wiring), as specified in paragraph (b) of this AD, were inadvertently omitted from the Summary section of the proposed rule. Those actions have been included in the Summary section of this final rule for clarification. We also have changed the heading for paragraph (b) of the final rule to specify ''Follow-On Actions,'' in lieu of ''Replacement and Reporting of Damaged Wiring,'' to better define the actions specified in paragraph (b) of this final rule.

Conclusion

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

Cost Impact

There are approximately 266 airplanes of the affected design in the worldwide fleet. The FAA estimates that 75 airplanes of U.S. registry will be affected by this AD, that it will take approximately the number of work hours per airplane displayed in the table below to accomplish the required modifications, and that the average labor rate is $60 per work hour. Required parts costs are also listed in the table below:

ESTIMATED COST IMPACT

Boeing service bulletin	Number of work hours per airplane	Parts cost per airplane	Estimated cost per airplane	Number of U.S. airplanes affected	Estimated cost to U.S. fleet
777–28–0012	38	$628	$2,908	23	$66,884
777–28–0016 (Group 1)	43	490	3,070	18	55,260
777–28–0016 (Group 2)	48	839	3,719	57	211,983
777–28–0021 (Work Package 1)	30	1,058	2,858	75	214,350
777–28–0021 (Work Package 2)	32	1,058	2,978	75	223,350

Service Bulletins 777–28–0012 and 777–28–0016 both address center fuel tank (CFT) wiring improvements and require CFT entry. Operators should note that concurrent incorporation of these two service bulletins would

minimize tank entries and would be a cost savings (33 work hours per airplane) to the operators because they would need to de-fuel, access, and close access to the CFT only once.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–16–15 Boeing: Amendment 39–12854. Docket 2000–NM–387–AD.

Applicability: Model 777 series airplanes, line numbers 1 through 266 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the fuel quantity indicator system (FQIS) wiring on surrounding structures and systems, which could result in exposure of the bare conductor in close proximity to structures or other electrically conductive return paths, and potential electrical arcing and explosion in the fuel tank in the event of an additional wiring failure outside the fuel tank, accomplish the following:

Modifications

(a) Within 24 months after the effective date of this AD, complete the actions required by paragraphs (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

Modification of Model 777–200 Center Fuel Tank Wiring

(1) For Model 777–200 series airplanes identified in Boeing Special Attention Service Bulletin 777–28–0012, dated September 2, 1999, modify the FQIS wire bundles (including removing the FQIS wire bundle support brackets at each spanwise beam penetration and replacing them with seals, removing the FQIS wire bundle support brackets from the side of the body rib, installing a grommet in the penetration hole, and replacing the bracket with two new brackets), in accordance with the Accomplishment Instructions of the service bulletin.

Modification of Model 777–200 and –300 Center Fuel Tank Wiring

(2) For Model 777–200 and –300 series airplanes identified in Boeing Special Attention Service Bulletin 777–28–0016, dated April 27, 2000, modify the supports for the FQIS wire bundles in the center fuel tank (including installing spacers on the FQIS wiring support brackets and standoffs, installing a clamp next to the grommet at each tank unit, and replacing the clamp filler O-rings), in accordance with the Accomplishment Instructions of the service bulletin.

Modification of Model 777–200 and –300 Main Fuel Tank Wiring

(3) For Model 777–200 and –300 series airplanes identified in Boeing Special Attention Service Bulletin 777–28–0021, dated April 27, 2000, modify the FQIS wire bundles in the main fuel tanks (including installing spacers on the wiring support brackets and standoffs, installing a clamp next to the grommet at each tank unit, and replacing the clamp O-rings), in accordance with the Accomplishment Instructions of the service bulletin.

Follow-On Actions

(b) If any damaged wiring is found during the performance of the modifications required by paragraph (a)(1), (a)(2), or (a)(3) of this AD, before further flight, replace the damaged wiring with new wiring in accordance with Boeing Standard Wiring Practices Manual D6–54446, Chapter 20, Section 10, Subject 11 (20–10–11), dated August 1, 1996. Then submit a report of damaged wire findings to Service Bulletin Engineering, Boeing Commercial Airplane Group, P.O. Box 3707, Mail Stop 2H–37, Seattle, Washington 98124–2207, at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. The report must include a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the modifications are accomplished after the effective date of this AD: Submit the report within 14 days after performing the applicable modification required by paragraph (a)(1), (a)(2), or (a)(3) of this AD.

(2) For airplanes on which the modifications were accomplished before the effective date of this AD, it is not necessary to re-enter the fuel tanks to conduct inspections. Based on records collected during the previous modifications, submit the report within 60 days after the effective date of this AD. The report must include the date the modifications were done; any problems recorded when doing the modifications; a description of where the problems were found, if recorded; and a point of contact and telephone number.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(e) The modifications shall be done in accordance with Boeing Special Attention Service Bulletin 777–28–0012, dated September 2, 1999; Boeing Special Attention Service Bulletin 777–28–0016, dated April 27, 2000; and Boeing Special Attention Service Bulletin 777–28–0021, dated April 27, 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on September 26, 2002.

Issued in Renton, Washington, on August 5, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20269 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–307–AD; Amendment 39–12849; AD 2002–16–10]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes, that requires various modifications of the airstair (main passenger) door. This action is necessary to prevent failure of the airstair door to open after a landing, which could result in a blocked escape route during an emergency evacuation. This action is intended to address the identified unsafe condition.

DATES: Effective September 26, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 26, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes was published in the **Federal Register** on March 20, 2002 (67 FR 12908). That action proposed to require various modifications of the airstair (main passenger) door.

Comments

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

Explanation of Credit Language

Since the language in Note 3 of the proposed AD is regulatory in nature, the note has been redesignated as paragraph (b) in this final rule. The remaining paragraphs of this final rule have been redesignated to accommodate this change.

Conclusion

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

Cost Impact

The FAA provides the following cost estimates for the actions specified by this AD:

Action per service bulletin	Work hours per airplane	Labor rate per hour	Parts cost per airplane	Number of U.S. airplanes affected	Per-airplane cost	Fleet cost
8–52–46	3	$60	$297	194	$477	$92,538
8–52–38	4	60	1,930	130	2,170	282,100
8–52–57	1	60	0	194	60	11,640
8–52–56	4	60	0	194	240	46,560
8–52–59	3	60	0	194	180	34,920

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include

incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–16–10 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–12849. Docket 2000–NM–307–AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes; certificated in any category; serial numbers 003 through 550.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the airstair door to open after a landing, which could result in a blocked escape route during an emergency evacuation, accomplish the following:

Modifications

(a) Modify the airplane as specified in Table 1 of this AD. Table 1 is as follows:

TABLE 1.—MODIFICATION REQUIREMENTS

For model—	Modify the airstair door by—	Within—	In accordance with the accomplishment instructions of bombardier service bulletin—
(1) DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes; serial numbers 003 through 522 inclusive.	Replacing the inflation valve with a new valve of an improved design (Modsum 8Q100185).	6 months after the effective date of this AD.	8–52–46, dated September 30, 1998.
(2) DHC–8–102, –103, –106, –301, –311, and –315 series airplanes; serial numbers 003 through 400 inclusive.	Reworking the airstair door cable balance assembly (Modsum 8/2205).	6 months after the effective date of this AD.	8–52–38, dated October 10, 1995; or 8–52–38, Revision ''A,'' dated September 19, 1997.
(3) DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes; serial numbers 003 through 550 inclusive.	Replacing the upper cable guards on the airstair door with new, improved cable guards (Modsum 8Q101093).	6 months after the effective date of this AD, but after the modification required by paragraph (a)(2) of this AD.	8–52–57, dated February 23, 2000; or 8–52–57, Revision ''A,'' dated July 28, 2000; or 8–52–57, Revision ''B,'' dated November 14, 2000.
(4) DHC–8–102, –103, 106, –201, –202, –301, 311, and –315 series airplanes; serial numbers 003 through 550 inclusive.	(i) Manufacturing and installing a support bracket assembly (Modsum 8Q101086); and/or.	6 months after the effective date of this AD.	8–52–56, Revision ''C,'' dated March 10, 2000; or 8–52–56, Revision ''D,'' dated May 18, 2000; or 8–52–56, Revision ''E,'' dated July 20, 2000; or 8–52–56, Revision ''F,'' dated August 29, 2000; or 8–52–56, Revision ''G,'' dated November 7, 2000.
	(ii) Replacing the airstair door gas springs with new gas springs (Modsum 8Q101074).	6 months after the effective date of this AD.	8–52–59, dated September 18, 2000; or 8–52–59, Revision ''A,'' dated January 3, 2001.

Note 2: Modsum 8Q101093 (paragraph (a)(3) of this AD) cannot be accomplished before Modification 8/2205 (paragraph (a)(2) of this AD), because Modsum 8Q101093 introduces a redesigned cable guard that replaces a cable guard that is part of Modification 8/2205.

(b) Modification, as specified by either paragraph (a)(4)(i) or (a)(4)(ii)—or both—of this AD, is acceptable for compliance with

the requirements of paragraph (a)(4) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with the Bombardier service bulletins listed in Table 2 of this AD, as applicable. Table 2 is as follows:

TABLE 2.—SERVICE DOCUMENTS

Service bulletin	Revision level	Dated
8–52–38 ...	Original	October 10, 1995.
8–52–38 ...	'A'	September 19, 1997.
8–52–46 ...	Original	September 30, 1998.
8–52–56 ...	'C'	March 10, 2000.
8–52–56 ...	'D'	May 18, 2000.
8–52–56 ...	'E'	July 20, 2000.
8–52–56 ...	'F'	August 29, 2000.
8–52–56 ...	'G'	November 7, 2000.
8–52–57 ...	Original	February 23, 2000.
8–52–57 ...	'A'	July 28, 2000.
8–52–57 ...	'B'	November 14, 2000.
8–52–59 ...	Original	September 18, 2000.
8–52–59 ...	'A'	January 3, 2001.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–19R1, dated January 22, 2001.

Effective Date

(f) This amendment becomes effective on September 26, 2002.

Issued in Renton, Washington, on August 12, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20931 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–10–AD; Amendment 39–12864; AD 2002–16–25]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arriel Models 2 S1, 2 B, and 2 C Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Turbomeca S.A. Arriel models 2 S1, 2 B, and 2 C turboshaft engines. This amendment requires initial and repetitive visual inspections for fuel leaks, and replacement of fuel pumps that are found leaking fuel. In addition, this amendment requires that fuel pumps found with pump wall thickness below minimum be removed from service. This amendment is prompted by a manufacturing investigation of pump bodies found to have below minimum material thickness, which could cause fuel leakage through thin, porous walls, reducing fuel pump fire resistance. The actions specified by this AD are intended to prevent fuel leakage, which may cause engine fires that could lead to an in-flight engine shutdown, damage to the helicopter, and forced landing.

DATES: Effective September 26, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 26, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 64 40 00; fax (33) 05 59 64 60 80. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7136; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Turbomeca S.A. Arriel models 2 S1, 2 B, and 2 C turboshaft engines was published in the **Federal Register** on February 11, 2002 (67 FR 6210). That action proposed to require initial and repetitive visual inspections for fuel leaks, and replacement of fuel pumps that are found leaking fuel. In addition, that action proposed to require that fuel pumps found with pump wall thickness below minimum be removed from service. These proposed actions would be done in accordance with Turbomeca Service Bulletin (SB) No. 292 73 2803, dated July 2, 1999.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 44 engines of the affected design in the worldwide fleet. It is unknown how many engines are installed on aircraft of U.S. registry that would be affected by this AD. The FAA estimates that it would take approximately 1.5 work hours per engine to accomplish the actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $59,000 per engine. Based on these figures, the total cost of the AD is estimated to be $59,090 per engine. Assuming all 44 engines are installed on aircraft of U.S. registry, the total cost is estimated to be $2,599,960. The manufacturer has advised the Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, that affected pumps may be exchanged free of charge, thereby substantially reducing the potential cost of this rule.

Regulatory Analysis

This final rule does not have federalism implications, as defined in

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–16–25 Turbomeca S.A.: Amendment 39–12864. Docket No. 2001–NE–10–AD.

Applicability

This airworthiness directive (AD) is applicable to Turbomeca S.A. Arriel models 2 S1, 2 B, and 2 C turboshaft engines. These engines are installed on, but not limited to Sikorsky S76, Eurocopter France ''Ecureuil'' AS 350 B3, and Eurocopter France ''Dauphin'' AS 365 N3 helicopters.

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

Compliance

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

To prevent fuel leakage, which may cause engine fires that could lead to an in-flight engine shutdown, damage to the helicopter, and forced landing, do the following:

Inspections and Actions

(a) For the fuel metering high pressure/low pressure (HP/LP) pump assemblies listed by serial number (SN) in Appendix 1 of Turbomeca Service Bulletin (SB) No. 292 73 2803, dated July 2, 1999, do the following:

(1) After the last flight of each day, within five minutes of engine shutdown, perform a visual inspection of the floor of the helicopter engine bay for fuel leaks.

(2) If evidence of a fuel leak is observed, inspect the fuel metering HP/LP pump assembly for leakage and if leakage is observed, replace with a serviceable pump assembly before further flight.

(3) If visual inspection of the floor of the helicopter engine bay for fuel leaks reveals no leaks, do either of the following:

(i) Continue repetitive visual inspections of the floor of the helicopter engine bay for fuel leaks in accordance with paragraph (a)(1) of this AD, and perform repetitive visual inspections of the fuel metering HP/LP pump assembly for fuel leaks at intervals not to exceed 50 hours of operation. If evidence of fuel leaking is observed, replace the pump assembly with a serviceable pump assembly before further flight, in accordance with Turbomeca SB No. 292 73 2803, dated July 2, 1999; or

(ii) Remove the pump assembly and inspect to determine if pump body material wall thickness is below the minimum material thickness, in accordance with Section 2 of Turbomeca SB No. 292 73 2803, dated July 2, 1999. If pump body material wall thickness is at or above the minimum material thickness, mark the pump assembly by adding a letter ''x'' to the end of the SN.

(b) Replace the fuel metering HP/LP pump assembly if listed by SN in Appendix 1 of Turbomeca Service Bulletin (SB) No. 292 73 2803, dated July 2, 1999, with a serviceable pump assembly by December 31, 2006.

Definition

(c) For the purposes of this AD, a serviceable pump assembly is a fuel metering HP/LP pump assembly not listed by SN in Appendix 1 of Turbomeca SB No. 292 73 2803, dated July 2, 1999, or a fuel metering HP/LP pump assembly listed by SN in Appendix 1 whose pump body material wall thickness has been determined by inspection to be at or above the minimum material thickness, and marked in accordance with paragraph (a)(3)(ii) of this AD.

Terminating Action

(d) Replacement, or verification of correct wall thickness of a fuel metering HP/LP pump assembly that is listed in Appendix 1 of Turbomeca SB No. 292 73 2803, dated July 2, 1999, with a serviceable pump assembly as defined in paragraph (c) of this AD, is considered terminating action for the inspection requirements specified in paragraph (a) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Documents That Have Been Incorporated by Reference

(g) The inspections and removals must be done in accordance with Turbomeca SB No. 292 73 2803, dated July 2, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 64 40 00; fax (33) 05 59 64 60 80. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Direction Generale de L'Aviation Civile (DGAC) Airworthiness Directive AD 99–285(A), dated July 13, 1999.

Effective Date

(h) This amendment becomes effective on September 26, 2002.

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

Mark C. Fulmer,

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

[FR Doc. 02–21355 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–061]

RIN 2115–AE46

Special Local Regulations for Marine Events; Delaware River, Pea Patch Island to Delaware City, DE

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the ''Escape from Fort Delaware—One Mile Swim'', a marine event to be held September 21, 2002 on the waters of the Delaware River between Pea Patch Island and Delaware City, Delaware. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Delaware River between Pea Patch Island and Delaware City during the event.

DATES: This rule is effective from 1:15 p.m. to 3:15 p.m. on September 21, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–061 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The event will be held on Saturday, September 21, 2002. There is not sufficient time to allow for an appropriate notice and comment period, prior to the event. Because of the danger posed to approximately 175 swimmers competing within a confined area, special local regulations are necessary to provide for the safety of event participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On September 21, 2002, CanalFest 2002, Inc. will sponsor the Escape from Fort Delaware—One Mile Swim. The event will consist of approximately 175 swimmers competing on a portion of the Delaware River between Pea Patch Island and Delaware City, Delaware. A fleet of spectator vessels is expected to gather near the event site to view the swimmers. Due to the need for vessel control during the swimming event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Delaware River between Pea Patch Island and Delaware City, Delaware. The temporary special local regulations will be in effect from 1:15 p.m. to 3:15 p.m. on September 21, 2002. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

Although this rule prevents traffic from transiting a portion of the Delaware River during the event, the effect of this rule will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Delaware River during the event.

Although this rule prevents traffic from transiting a portion of the Delaware River during the event, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraphs (34)(h) and (35)(a) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are specifically excluded from further analysis and documentation under those sections. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 1:15 p.m. to 3:15 p.m. on September 21, 2002, add temporary section, § 100.35–T05–061 to read as follows:

§ 100.35–T05–061 Delaware River, Pea Patch Island to Delaware City, Delaware.

(a) *Definitions.* (1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Philadelphia.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Group Philadelphia with a commissioned, warrant, or petty officer of the Coast Guard on board and displaying a Coast Guard ensign

(b) *Regulated area.* All waters of the Delaware River between Pea Patch Island and Delaware City, Delaware, bounded by a line connecting the following points:

Latitude	Longitude
39°36′35.7″ North	075°35′25.6″ West, thence to
39°34′57.3″ North	075°33′23.1″ West, thence to
39°34′11.9″ North	075°34′28.6″ West, thence to
39°35′52.4″ North	075°36′33.9″ West

All coordinates reference Datum NAD 1983.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(d) *Enforcement period.* This section will be enforced from 1:15 p.m. to 3:15 p.m. on September 21, 2002.

Dated: August 14, 2002.

A. E. Brooks,

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

[FR Doc. 02–21468 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–059]

RIN 2115–AE46

Special Local Regulations for Marine Events; Atlantic Ocean, Atlantic City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the ''Trump Marina Offshore Grand Prix'', a marine event to be held September 20–22, 2002, on the waters of the Atlantic Ocean, adjacent to

Atlantic City, New Jersey. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Atlantic Ocean during the event.

DATES: This rule is effective from 11:30 a.m. on September 20, 2002, to 3:30 p.m. on September 22, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–059 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. There is not sufficient time to allow for a notice and comment period, prior to the event on September 20–22, 2002. Because of the danger inherent in high-speed boat races, special local regulations are necessary to provide for the safety of spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On September 20–22, 2002, the New Jersey Performance Power Boat Club will sponsor the ''Trump Marina Offshore Grand Prix'', on the Atlantic Ocean, adjacent to Atlantic City, New Jersey. The event will consist of approximately 90 offshore power boats racing in heats along a 5 mile course on both September 21 and September 22, 2002. Preliminary speed trials along the same course will be conducted on September 20, 2002. A fleet of spectator vessels is anticipated. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey. The regulated area includes a 3-mile long section of the Atlantic Ocean south of Absecon Inlet, extending approximately 900-yards out from the shoreline. The temporary special local regulations will be enforced from 11:30 a.m. to 3:30 p.m. on September 20, 21, and 22, 2002. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

Although this rule prevents traffic from transiting a portion of the Atlantic Ocean during the event, the effect of this rule will not be significant due to the limited duration of the regulation, the fact that non-participating vessels may transit outside the regulated area during the event, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Atlantic Ocean during the event.

Although this rule prevents traffic from transiting or anchoring in a portion of the Atlantic Ocean during the event, the effect of this rule will not be significant because of the limited duration that the regulated area will be in effect, the fact that non-participating vessels may transit outside the regulated area during the event, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(h), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are specifically excluded from further analysis and documentation under that section. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C 1233; 49 CFR 1.46.

2. From 11:30 a.m. on September 20, 2002 to 3:30 p.m. on September 22, 2002, add temporary section, § 100.35–T05–059 to read as follows:

§ 100.35–T05–059 Atlantic Ocean, Atlantic City, New Jersey.

(a) *Definitions.* (1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Atlantic City.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Group Atlantic City with a commissioned, warrant, or petty officer of the Coast Guard on board and displaying a Coast Guard ensign.

(b) *Regulated area.* All waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: southeasterly from a point along the shoreline at latitude 39°21′50″ N, longitude 074°24′37″ W, thence to latitude 39°20′40″ N, longitude 74°23′50″ W, thence southwesterly to latitude 39°19′33″ N, longitude 074°26′52″ W, thence northwesterly to a point along the shoreline at latitude 39°20′43″ N, longitude 74°27′40″ W, thence northeasterly along the shoreline to latitude 39°21′50″ N, longitude 074°24′37″ W. All coordinates reference Datum NAD 1983.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in these areas shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(d) *Enforcement period.* This section will be enforced from 11:30 a.m. to 3:30 p.m. on September 20, 21, and 22, 2002.

Dated: August 14, 2002.

A.E. Brooks,

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

[FR Doc. 02–21470 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–062]

RIN 2115–AE46

Special Local Regulations for Marine Events; Sunset Lake, Wildwood Crest, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the ''Sunset Lake Hydrofest'', a marine event to be held September 28 and 29, 2002, on the waters of Sunset Lake near Wildwood Crest, New Jersey. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in portions of Sunset Lake during the event.

DATES: This rule is effective from 9:30 a.m. on September 28, 2002, to 6:30 p.m. on September 29, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–062 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Commander

(Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The high-speed power boat races will take place on September 28 and 29, 2002. There is not sufficient time to allow for a notice and comment period, prior to the event. Because of the danger inherent in high-speed power boat races, special local regulations are necessary to provide for the safety of spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On September 28 and 29, 2002, the Sunset Lake Hydrofest Association will sponsor the ''Sunset Lake Hydrofest'', on the waters of Sunset Lake near Wildwood Crest, New Jersey. The event will consist of approximately 80 inboard hydroplanes, Jersey Speed Skiffs and flat-bottom Ski boats racing in heats counter-clockwise around an oval racecourse. A fleet of 50 to 100 spectator vessels is anticipated. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of Sunset Lake. The temporary special local regulations will be enforced from 9:30 a.m. to 6:30 p.m. (local time) on both September 28 and 29, 2002, and will restrict general navigation in the regulated area during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

Although this rule prevents traffic from transiting a portion of Sunset Lake during the event, the effect of this rule will not be significant due to the limited duration of the regulation and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of Sunset Lake during the event.

Although this rule prevents traffic from transiting or anchoring in a portion of Sunset Lake during the event, the effect of this rule will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not

an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(h) and (35)(a) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under those sections. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C 1233; 49 CFR 1.46.

2. From 9:30 a.m. on September 28, 2002 to 6:30 p.m. on September 29, 2002, add temporary section, § 100.35–T05–062 to read as follows:

§ 100.35–T05–062 Sunset Lake, Wildwood Crest, New Jersey.

(a) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Atlantic City.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Group Atlantic City with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Sunset Lake Hydrofest under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Group Atlantic City.

(b) *Regulated area.* Includes all waters of Sunset Lake, from shoreline to shoreline, south of latitude 38°58′32″ N. All coordinates reference Datum: NAD 1983.

(c) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(iii) Unless otherwise directed by the official patrol, operate at a minimum wake speed not to exceed six (6) knots.

(d) *Enforcement period.* This section will be enforced from 9:30 a.m. to 6:30 p.m. on both September 28 and 29, 2002.

Dated: August 14, 2002.

A.E. Brooks,

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

[FR Doc. 02–21469 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AI22

Schedule for Rating Disabilities; Intervertebral Disc Syndrome

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends that portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities that addresses intervertebral disc syndrome. The effect of this action is to clarify the criteria to ensure that veterans diagnosed with this condition meet uniform criteria and receive consistent evaluations.

DATES: *Effective Date:* This amendment is effective September 23, 2002.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Policy and Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend the evaluation criteria for diagnostic code 5293, intervertebral disc syndrome (IVDS), in the **Federal Register** of February 24, 1997 (62 FR 8204). Interested persons were invited to submit written comments on or before April 25, 1997. We received comments from the Vietnam Veterans of America, Disabled American Veterans, Paralyzed Veterans of America, and two concerned individuals.

We proposed to evaluate IVDS either on its chronic neurologic and orthopedic manifestations or on the total annual duration of incapacitating episodes, whichever would result in a higher evaluation. One commenter recommended that the final rule specify whether there could be separate evaluations of the chronic manifestations of each spinal segment with IVDS; whether there could be separate evaluations based on incapacitating episodes of each spinal segment; and whether one spinal segment could be evaluated based on incapacitating episodes and another on chronic manifestations.

In response to this comment, we have added a third note specifying that IVDS in separate spinal segments will be separately evaluated as long as the effect on each segment is clearly distinct. Inherent in the rule is the concept that each affected spinal segment will be evaluated under the method that results in the highest overall evaluation. This means that affected segments may be separately evaluated based on: (1) Incapacitating episodes, (2) chronic manifestations; or (3) one affected segment may be evaluated based on incapacitating episodes and another segment may be evaluated based on chronic manifestations.

One commenter stated that acute incapacitating symptoms are distinct from chronic symptoms involving

persistent orthopedic and neurological manifestations because each has a different effect on functionality. The commenter stated that IVDS should be rated on both acute and chronic symptoms, as long as the manifestations are different, and then the ratings should be combined. The commenter stated that, if for example a veteran has foot drop as a result of IVDS that interferes with earning capacity and also requires frequent bed rest due to IVDS that affects earning capacity, the veteran has separate disabilities that should be evaluated separately and then combined, rather than rating based on the higher of the two respective evaluations.

Acute incapacitating symptoms and chronic symptoms do not necessarily represent different manifestations of IVDS. For example, IVDS may result in chronic back pain and limitation of motion (a chronic orthopedic manifestation); back pain and limitation of motion may also cause periods of acute incapacitation. Some individuals present predominantly or exclusively with acute symptoms, some with chronic symptoms, and some with both. We have provided alternative methods of evaluation that allow the use of either the chronic manifestations or the total duration of incapacitating episodes for evaluation, whichever results in a higher evaluation. But, in our view, assigning an evaluation under both methods for functional impairment due to IVDS would clearly result in duplicate evaluations of a single disability, and therefore would constitute pyramiding, which is prohibited by 38 CFR 4.14. We therefore make no change in response to this comment.

Another commenter noted that, in some individuals both IVDS and residuals of a vertebral fracture in the same spinal segment are service-connected. Diagnostic code 5285, which applies to fractures of vertebral bodies, directs that ten percent be added to a spinal evaluation if it is less than 60 percent disabling and if there is demonstrable deformity of the vertebral body. The commenter suggested that the evaluation criteria indicate whether ten percent should be added to a rating for IVDS for either chronic residuals or incapacitating episodes.

When vertebral fracture and IVDS are present in the same spinal segment, the signs and symptoms of each condition commonly overlap and may be inseparable. For example, both conditions may cause pain and limitation of motion of the spine and neurologic disability. In such cases, a single overall evaluation for the manifestations of both disabilities would be assigned, since evaluating the same disability under two diagnoses is prohibited (*see* 38 CFR 4.14). Ten percent would be added to the single overall evaluation, if it is less than 60 percent disabling, when there is demonstrable vertebral deformity, because the x-ray finding that is the basis for the added ten percent does not duplicate or overlap any other evaluation criteria for either condition. This is true whether the evaluation is based on the criteria for residuals of vertebral fracture, on the total duration of incapacitating episodes of IVDS, or on the chronic orthopedic and neurologic manifestations of IVDS. There may be some cases where the effects of IVDS and vertebral fracture are clearly separable. When that happens, the fracture residuals would be evaluated under diagnostic code 5285, with ten percent added for deformity of the vertebral body when appropriate, and the IVDS would be evaluated under either alternative method, as directed. As with other complex rating issues, if the situation arises, raters may request an advisory review opinion from the Compensation and Pension Service, but we do not believe this situation arises frequently enough to warrant the addition of specific regulatory instructions. We therefore make no change based on this comment.

The same commenter asked if bed rest because of spasm warrants the added 10 percent.

The instruction under diagnostic code 5285 specifies that ten percent is to be added on the basis of demonstrable vertebral deformity due to fracture. Bed rest because of spasm therefore does not warrant an additional 10 percent.

Another commenter recommended that the rule specify whether the evaluation for incapacitating episodes is to be compared with the neurologic and orthopedic evaluations, once combined pursuant to 38 CFR 4.25, or with the higher of those evaluations if both are present.

In response to this comment, we have revised the language under diagnostic code 5293 to direct that IVDS be evaluated based either on the total duration of incapacitating episodes or on the combination of separate evaluations of its chronic orthopedic and neurologic manifestations, whichever method results in the higher evaluation.

One commenter suggested that VA increase the proposed percentage evaluations for incapacitating episodes having a total duration of at least four to six weeks during the past 12 months because, in the commenter's view, veterans who are incapacitated for four to six weeks or more over the course of a year are unemployable. Another commenter also suggested that the evaluation criteria for IVDS should include a 100-percent level.

IVDS is characterized by periods of exacerbation and remission, with a tendency toward recovery over time (''Practical Orthopedic Medicine'' (Brian Corrigan and G.D. Maitland) 312, 1983). When IVDS first appears, with few exceptions, the preferred treatment is conservative and includes bed rest of approximately two to four weeks. The majority of patients with IVDS recover from the acute symptoms and have minimal residual functional or work capacity impairments (''Disability Evaluation'' (Stephen L. Demeter, M.D., Gunnar B.J. Anderson, M.D., and George M, Smith, M.D.) 288, 1996). The minority in whom conservative treatment fails; or who have repeated, disabling attacks resulting in prolonged loss of time from work; or who have intractable pain or severe or progressive neurological signs, will undergo surgery (''Fundamentals of Orthopedics'' (John J. Gartland, M.D.) 334, 1987). Only an occasional patient has disabling back pain and radicular symptoms after surgery (''Campbell's Operative Orthopaedics'') 2114, 1980). Therefore, except for short periods of treatment, or periods of convalescence following surgery, IVDS is rarely totally disabling.

The percentage ratings in the schedule ''represent as far as can practicably be determined the average impairment in earning capacity resulting from such diseases and injuries and their residual conditions in civil occupations,'' 38 CFR 4.1; 38 U.S.C. 1155, and, in our view, a 100 percent evaluation level for IVDS is not warranted. If a veteran has permanent neurological or orthopedic residuals following back surgery, those residuals could alternatively be rated under other appropriate rating formula. Also, an individual who is shown by the evidence to be unemployable may be assigned a total evaluation (even though the schedule does not provide a 100-percent evaluation) under the provisions of 38 CFR 4.16, 4.17, and 4.18. In view of this fact, and the information regarding the course and outcome of IVDS after treatment, we make no change based on this comment.

Another commenter suggested that the rule clarify the meaning of incapacitating episodes ''per year'' in order to assure that the calendar year is not used.

In response to this comment, we have revised diagnostic code 5293, for the sake of clarity, to specify total duration

of incapacitating symptoms ''during the past 12 months'' rather than ''per year.''

We proposed to define the term ''incapacitating episode of intervertebral disc syndrome'' to mean a period of acute symptoms (orthopedic, neurologic, or both), requiring bed rest prescribed by a physician and treatment by a physician. Such treatment by a physician would not require a visit to a physician's office or hospital but would include telephone consultation with a physician. One commenter suggested that we revise the definition to require bed rest ''prescribed by a physician,'' but eliminate the requirement for treatment.

A physician prescribing bed rest will ordinarily prescribe treatment, *e.g.,* analgesics, muscle relaxants, or traction, as well. In our view, the requirement for treatment by a physician makes the criteria clearer, more objective, and more likely to promote consistent evaluations. We therefore make no change in response to this comment. However, in order to clarify note (1), we have added ''prescribed by a physician'' following ''bed rest.''

The same commenter suggested that we waive the requirement for medical verification of the veteran's previous episodes of incapacitating back pain in original claims for IVDS because in such cases there would otherwise be a one-year waiting period from the date of claim.

Although in an original compensation claim, an award will be effective from the date of claim or the date entitlement arose, whichever is later (38 CFR 3.400(b)(2)(i)), nothing in the regulations precludes VA from considering medical evidence establishing the total duration of incapacitating episodes during the twelve-month period preceding the date of claim when evaluating the disability. Existing medical records documenting incapacitating episodes of IVDS, as defined in the regulation, during the twelve months before the veteran filed a claim, would be sufficient to establish the severity of the condition without a one-year waiting period. If there are no records of the need for bed rest and treatment, by regulation there were no incapacitating episodes. Chronic manifestations, on the other hand, could be evaluated based on an examination, regardless of whether there were any prior incapacitating episodes. We therefore make no change based on this comment.

Another commenter objected to the proposal to evaluate IVDS based only on doctor-ordered periods of bed rest and suggested that objective findings of IVDS provide a basis for evaluation and should be incorporated into the schedular criteria.

Objective findings, when present, may be used to evaluate IVDS based on chronic orthopedic and neurologic manifestations that are rating criteria under other diagnostic codes. However, some individuals with disabling IVDS exhibit few, if any, objective findings between incapacitating episodes. We have therefore provided alternative evaluation criteria based on periods of incapacitating episodes. Since we will evaluate IVDS under whichever method would result in the higher overall evaluation, we make no change based on this comment.

One commenter assumed that VA will issue companion regulations on how to rate each neurologic and orthopedic manifestation of IVDS, since chronic symptoms are not assigned evaluations in the proposed regulation. The commenter urged that such criteria accurately reflect impairment of earning capacity.

VA plans no separate regulation to address each neurologic and orthopedic manifestation of IVDS. There are existing criteria for evaluating neurologic and orthopedic disabilities, whether they result from IVDS, stroke, or other condition, in the neurologic and musculoskeletal portions of the rating schedule. Additional neurologic manifestations are addressed under diagnostic codes in the schedule for rating genitourinary or digestive systems. For further clarity, we have revised note (2) to indicate that the chronic orthopedic and neurologic manifestations of IVDS are to be evaluated under the most appropriate code or codes. Evaluating disabilities due to IVDS that are identical to disabilities of other etiology under the same criteria will assure consistency and fairness of evaluations.

Proposed note (2) stated that, when evaluating IVDS on the basis of chronic manifestations, orthopedic manifestations, such as limitation of motion of lumbar or cervical spine, paravertebral muscle spasm, or scoliosis of the spine, are to be evaluated under diagnostic code 5293 (IVDS), using evaluation criteria for an appropriate diagnostic code, and neurologic manifestations, such as footdrop, muscle atrophy, sensory loss, or neurogenic bladder, are to be evaluated separately under diagnostic code 5293, using evaluation criteria for an appropriate diagnostic code. One commenter said the note does not provide clear or objective guidance on the degree of disability to be assigned for these manifestations.

There are so many potential neurologic and orthopedic manifestations of IVDS that it would be impractical to incorporate all of them into a single set of criteria. It is not only more practical, but also consistent with the manner in which VA evaluates other conditions that may affect more than one body system, to use evaluation criteria for existing orthopedic and neurologic diagnostic codes to evaluate the specific manifestations of IVDS. We therefore make no change based on this comment.

The same commenter suggested additional chronic manifestations of IVDS that the commenter believes are more objective than the proposed criteria.

The criteria suggested by the commenter would require subjective interpretations of terms such as ''light'' or ''heavy'' labor, ''moderate'' activity, etc. In our view this language is less objective than that in the proposed criteria, and we make no change based on this comment.

One commenter asserted that proposed note (2) conflicts with *Esteban* v. *Brown,* 6 Vet. App. 259 (1994), because it precludes an evaluation for the orthopedic manifestations of the spine in addition to an evaluation for IVDS under diagnostic code 5293.

In *Esteban*, a case that concerned the evaluation of a facial injury, with residuals of painful scars, injury to the facial muscles, and disfigurement, the Court of Appeals for Veterans Claims (CAVC) pointed out that each of the three disabling effects of the injury could be separately evaluated unless they constitute the ''same disability'' or the ''same manifestation'' under 38 CFR 4.14 (see above), or unless any of the diagnostic codes in question state that a veteran may not be rated separately for the described conditions. None of the three diagnostic codes at issue precluded separate ratings for the described conditions and the CAVC stated that the critical element in the case was that none of the symptomatology for any one of the three conditions is duplicative of, or overlapping with, the symptomatology of the other two conditions.

Diagnostic code 5293 allows for separate evaluations of chronic orthopedic and chronic neurologic manifestations of IVDS because these manifestations are separate and distinct, and do not constitute the ''same disability'' or the ''same manifestation'' under 38 CFR 4.14. However, virtually all acute incapacitating episodes rated under diagnostic code 5293 for IVDS would be the result of chronic orthopedic and/or chronic neurologic

findings. We therefore believe that, if ratings for orthopedic and chronic manifestations were combined with a rating for incapacitating episodes under diagnostic code 5293, it would result in evaluation of the same disability under multiple diagnostic codes, a result which is to be avoided per 38 CFR 4.14. Also providing alternative methods for evaluating IVDS is consistent with the manner in which we evaluate other conditions. For example, lupus erythematosus, diagnostic code 6350, may be evaluated based either on an overall evaluation under 6350 or on an evaluation of its residuals under other diagnostic codes in an appropriate system or systems, whichever method results in a higher evaluation. As a result, there is no conflict with *Esteban*, and we make no change based on this comment.

One commenter stated that the rule is inconsistent with the manner in which IVDS and orthopedic and/or neurologic manifestations were rated under the prior version of diagnostic code 5293. According to the commenter, prior diagnostic code 5293 allowed the maximum 60-percent rating for disability attributable to IVDS plus a separate rating for disability affecting other body parts or functions. In support of this comment, the commenter cited *Bierman* v. *Brown*, 6 Vet. App. 125, 129 (1994).

Evaluations of zero to 40 percent under the previous version of diagnostic code 5293 were based on recurring attacks and the extent of relief between attacks. The maximum evaluation of 60 percent required ''persistent symptoms compatible with sciatic neuropathy with characteristic pain and demonstrable muscle spasm, absent ankle jerk, or other neurological findings appropriate to site of diseased disc, little intermittent relief.'' In *Bierman*, the Board of Veterans' Appeals (BVA) denied a separate rating for neurological deficits because the veteran's 60 percent for IVDS under diagnostic code 5293 already compensated him for neurological deficits and their effects for which he was seeking a separate rating. The CAVC stated that, because the BVA failed to articulate a satisfactory statement of reasons or bases for its rating, the Court could not determine why this veteran's IVDS was not rated separately for foot drop under DC 8521, pertaining to paralysis of the popliteal nerve. The CAVC also stated that it was unclear from the rating schedule itself which functional disabilities were compensated as part of a 60-percent rating for IVDS.

Notwithstanding the commenter's interpretation of the prior evaluation criteria, a memorandum issued by the BVA Chairman, Memorandum, No. 01–92–23, dated August 10, 1992, did not interpret prior diagnostic code 5293 to allow a full 60 percent in addition to a separate evaluation for other body parts. Rather, it stated that, except for exceptional cases, a single rating of 60 percent will ordinarily be assigned when a veteran's footdrop is the result of radiculopathy attributable to IVDS. By specifying in this rulemaking that a rating for IVDS may be based either on the combined severity of the chronic neurological and orthopedic findings, or on the extent of incapacitating episodes resulting from all manifestations of the disease under diagnostic code 5293, we clarify how functional manifestations of IVDS are to be evaluated, and we make no further changes based on this comment.

The same commenter stated that the rating criteria in the proposed rule are not consistent with other ratings in the schedule because the design of the proposed rule does not provide a rating that corresponds to functional impairment.

We disagree. On the contrary, the revised rule will assure consistency with other ratings in the schedule because the same rating criteria will be used to evaluate identical disabilities, regardless of etiology. The functional impairment due to footdrop or limitation of motion of the spine, for example, will be evaluated using the same criteria, whether due to IVDS or any other cause. If both footdrop and limitation of motion of the spine are present, the combined evaluation will be the same, whether due to IVDS or any other cause. These provisions are clearly consistent with the approach and manner in which we assess functional impairment in similar disabilities, and we make no change based on this comment.

The same commenter stated that the rule must ''continue'' to recognize that secondary disabilities involving separate anatomical segments or body parts and separate functions are separately ratable and may be rated in combination with a 60-percent rating for disc syndrome itself.

As discussed above, the commenter's interpretation of the previous evaluation criteria for IVDS is not consistent with VA's interpretation. Under the new criteria, all orthopedic and neurologic disabilities that are part of IVDS, whether affecting the spine, the extremities, the bladder, or other areas, will be evaluated under one or the other of the alternative methods of evaluation. However, the revised regulation is also clear that IVDS cannot be evaluated under both sets of criteria for a single spinal segment. If the evaluation is based on the chronic orthopedic and neurologic manifestations, there will be no evaluation for incapacitating episodes. We therefore make no change based on this comment.

We have edited the definition of incapacitating episodes for clarity and have defined ''chronic manifestations'' to mean ''orthopedic and neurologic signs and symptoms resulting from IVDS that are present constantly, or nearly so.'' These are not substantive changes.

We have also simplified note (2) by editing for clarity and by removing specific examples of chronic manifestations, which we believe are unnecessary.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted with the amendments noted above.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Approved: June 24, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 4 is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

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

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

2. Section 4.71a is amended by revising diagnostic code 5293 and adding an authority citation at the end of the section to read as follows:

§ 4.71a Schedule of ratings—musculoskeletal system.

* * * * *

THE SPINE

	Rating
* * * * *	
5293 Intervertebral disc syndrome:	
Evaluate intervertebral disc syndrome (preoperatively or postoperatively) either on the total duration of incapacitating episodes over the past 12 months or by combining under § 4.25 separate evaluations of its chronic orthopedic and neurologic manifestations along with evaluations for all other disabilities, whichever method results in the higher evaluation.	
With incapacitating episodes having a total duration of at least six weeks during the past 12 months	60
With incapacitating episodes having a total duration of at least four weeks but less than six weeks during the past 12 months	40
With incapacitating episodes having a total duration of at least two weeks but less than four weeks during the past 12 months	20

THE SPINE—Continued

	Rating
With incapacitating episodes having a total duration of at least one week but less than two weeks during the past 12 months	10

Note (1): For purposes of evaluations under 5293, an incapacitating episode is a period of acute signs and symptoms due to intervertebral disc syndrome that requires bed rest prescribed by a physician and treatment by a physician. ''Chronic orthopedic and neurologic manifestations'' means orthopedic and neurologic signs and symptoms resulting from intervertebral disc syndrome that are present constantly, or nearly so.

Note (2): When evaluating on the basis of chronic manifestations, evaluate orthopedic disabilities using evaluation criteria for the most appropriate orthopedic diagnostic code or codes. Evaluate neurologic disabilities separately using evaluation criteria for the most appropriate neurologic diagnostic code or codes.

Note (3): If intervertebral disc syndrome is present in more than one spinal segment, provided that the effects in each spinal segment are clearly distinct, evaluate each segment on the basis of chronic orthopedic and neurologic manifestations or incapacitating episodes, whichever method results in a higher evaluation for that segment.

* * * * *

(Authority: 38 U.S.C. 1155)

[FR Doc. 02–21365 Filed 8–21–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 264–0355a; FRL–7258–3]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns the emission of volatile organic compounds (VOC) from steam drive crude oil production wells.

DATES: This rule is effective on October 21, 2002, without further notice, unless EPA receives adverse comments by September 23, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rule revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revision and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
MBUAPCD	427	Steam Drive Crude Oil Production Wells	12/19/01	03/15/02

On May 7, 2002, this submittal was found to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved into the SIP on February 9, 1996 (60 FR 8565) a version of Rule 427, adopted on August 25, 1993.

C. What Is the Purpose of the Submitted Rule Revision?

The purpose of these revisions to Rule 427 is to add certain exemptions for components with less than 10% VOC, to add a limitation on the number of wells that have open-ended lines, and to add two test methods.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Clean Air Act of 1990 (CAA)), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). The MBUAPCD regulates an ozone attainment area. 40 CFR part 81. Therefore Rule 427 is not required to fulfill RACT requirements.

Guidance and policy documents that we used to define specific enforceability requirements include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987* **Federal Register**, (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

B. Does the Rule Meet the Evaluation Criteria?

The principal changes to improve the rule include the incorporation of the latest applicable test methods and the limitation on the number of open-ended line. This latter revision should improve the effectiveness of the rule by reducing the potential number of valves that can leak. The rule revisions also exempt streams containing less than 10% VOC. These streams contribute negligible VOC emissions. This exemption should improve the effectiveness of the rule by allowing employees to work on areas where VOC emissions potentially can be decreased, allowing more time to repair leaks. This allowance is made because repairs are often contracted out and the contractor may not be able to perform the retesting in the time previously allowed. The net result is that these rule revisions should not significantly affect emissions from these sources, and should not interfere with the areas plan to maintain the ozone National Ambient Air Quality Standards (NAAQS).

We believe the rule is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations.

The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rule

The TSD for Rule 427 describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by September 23, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 21, 2002. This will incorporate this rule into the federally-enforceable SIP.

III. Background Information

A. Why Was This Rule Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. EPA has established a NAAQS for ozone. Section 110(a) of the CAA requires states to submit regulations necessary to achieve and maintain the ozone NAAQS. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May

22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 21, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. Section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 16, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(297)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(297) * * *

(i) * * *

(D) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 427, adopted on January 16, 1980 and amended on December 19, 2001.

* * * * *

[FR Doc. 02–21435 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0203; FRL–7194–3

Iprovalicarb; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an import tolerance for residues of iprovalicarb in or on grape at 2.0 parts per million (ppm). Tomen Agro, Inc. and Bayer Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective August 22, 2002. Objections and requests for hearings, identified by docket control number OPP–2002–0203, must be received on or before October 21, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–2002–0203 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6742; e-mail address: mcneilly.dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

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

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

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

2. *In person.* The Agency has established an official record for this action under docket control number OPP–2002–0203. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of September 22, 2000 (65 FR 57338) (FRL–6737–8), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of a pesticide petition (PP 9E6020) by Tomen Agro, Inc; and, Bayer Corporation, 100 First Street, Suite 1700, San Francisco, CA 94105; and, 8400 Hawthorn Road, Kansas City, MO 64120, respectively. This notice included a summary of the petition prepared by Tomen Agro, Inc. and Bayer Corp., the registrant. Iprovalicarb is an amino acid amide carbamate that belongs to a new class of chemicals derived from natural amino acids. Iprovalicarb acts both as a contact and systemic fungicide and is proposed for use in the European Union for control of Oomycete fungi, such as downy mildew. Review of this import tolerance was completed in cooperation with Canada's Pest Management Regulatory Agency. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing import tolerances for residues of the fungicide iprovalicarb, [2-methyl-1[[[(1S)-(4-methylphenyl) ethyl] amino]carbonyl] propyl]carbamic acid methylethylester, in or on grape and raisin at 2.0 ppm. An additional tolerance for the processed food, raisins, is not necessary because any residue in raisin from this use will be covered by the tolerance for grape.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for an import tolerance for residues of iprovalicarb on grape at 2.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by iprovalicarb are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity, mice	NOAEL = 325.0 for males; 696.5 for females mg/kg/day LOAEL = 1,724.6 for males, 3,599.5 for females mg/kg/day based on elevated water intake and changes in hematological parameters (erythrocyte count, MCV) in males; increases in liver weights and plasma cholesterol in females.
870.3100	90–Day oral toxicity, rat	NOAEL = 372.7 for males; 561.4 for females mg/kg/day LOAEL = 1,524.0 for males, 2,585.9 for females mg/kg/day based on males: decrease in plasma triglycerides and increase in leukoyte counts, alkaline phosphatase levels, pale livers and increased relative liver weights; females: increased food intake, decreased body weight gain and food efficiency and increased plasma cholesterol levels.
870.3150	90–Day oral toxicity, dog	NOAEL = 9.1 mg/kg/day LOAEL = 62.5 mg/kg/day based on increased absolute and relative liver weight, hepatocellular hypertrophy, increased serum activity of activity of alkaline phosphatase and decreased plasma protein levels.
870.3700	Prenatal developmental in rodents (rat)	Maternal NOAEL = 1,000 mg/kg/day LOAEL = >1,000 mg/kg/day based on the absence of treatment related toxicity in the dams at the highest dose tested. Developmental NOAEL = 1,000 mg/kg/day LOAEL = >1,000 mg/kg/day based on the absence of treatment related toxicity in the fetuses at the highest dose tested.
870.3700	Prenatal developmental in nonrodents(rabbit)	Maternal NOAEL = 1,000 mg/kg/day LOAEL = >1,000 mg/kg/day based on the absence of treatment related toxicity in the dams at the highest dose tested. Developmental NOAEL = 1,000 mg/kg/day LOAEL = >1,000 mg/kg/day based on the absence of treatment related toxicity in the fetuses at the highest dose tested.
870.3800	Reproduction and fertility effects, rat	Parental/Systemic NOAEL = 214.9 mg/kg/day LOAEL = 2,509 mg/kg/day based on increased relative liver weights in both sexes and bile duct proliferation in F_0 and F_1 parental males. Reproductive NOAEL = 214.9 mg/kg/day LOAEL = 2,509 mg/kg/day based on decreased mean litter weight at day 28 (F_1 and F_2), reduced body weight development in F_1 and F_2 pups. Offspring NOAEL = 214.9 mg/kg/day LOAEL = 2,509 mg/kg/day based on reduced body weight development during lactation and increased relative liver weights of the pups.
870.4100	Chronic toxicity, dog	NOAEL = 2.62 mg/kg/day LOAEL = 24.69 mg/kg/day based on biochemical and morphological liver effects, e.g., swelling, distinct lobulation and discoloration, increases in absolute and relative liver weights, and activities of ALT and ALP, hepatocellular hypertrophy and periportal fatty change.
870.4200	Carcinogenicity, mice	NOAEL = 58.5 mg/kg/day LOAEL = 283.4 mg/kg/day based on increased blood urea nitrogen concentration, decreased kidney weights and histopathological changes in the kidneys. No evidence of carcinogenicity.
870.4300	Combined chronic toxicity/ Carcinogenicity, rats	NOAEL = 26.0 mg/kg/day LOAEL = 262.5 mg/kg/day based on histopathological changes in the liver (bile duct hyperplasia). Evidence of carcinogenicity, consisting of treatment-related rare and uncommon tumors in multiple organs/tissues in male and female rats.
870.5100	Gene mutation	Negative with and without S9 activation up to 5,000 micrograms/plate in bacterial reverse mutation test (*S. typhimurium).*
870.5300	*In vitro* mammalian cell gene mutation	Negative with and without S9 activation up to 125 micrograms/mL (with S9) and 150 micrograms/mL (without S9) in *in vitro* mammalian cell forward mutation test (Chinese hamster lung fibroblasts).
870.5375	*In vitro* mammalian chromosomal aberration tests	Negative with and without S9 activation up to 150 micrograms/ml in *in vitro* mammalian cell assay (Chinese hamster ovary cells).
870.5385	Mammalian chromosomal aberration	Negative at 2,000 mg/kg in *in vivo* bone marrow micronucleus assay (mice).

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

Guideline No.	Study Type	Results
870.5550	Unscheduled DNA synthesis	Negative up to 500 micrograms/ml in *in vitro* mammalian cell assay (rat primary hepatocytes).
870.6200	Acute neurotoxicity screening battery, rat	NOAEL = 2,000 mg/kg/day LOAEL = >2,000 mg/kg/day based on no effects at the highest dose tested.
870.6200	Subchronic neurotoxicity screening battery	Systemic. NOAEL = 86.0 mg/kg/day LOAEL = 342.0 mg/kg/day based on decreased body weight and increased food consumption. Neurotoxicity. NOAEL = 1,434 mg/kg/day for males and 2,314 mg/kg/day for females LOAEL = >1,434 mg/kg/day for males and >2314 mg/kg/day for females based on no effects at the highest dose tested.
870.7485	Metabolism and pharmaco-kinetics	Up to 99% excreted via urine and feces within 72 hours. Material metabolized extensively; small percentage passed through rat unchanged. Twelve metabolites identified. Proposed biotransformation pathway via oxidation of methyl group on aromatic ring, leading to carboxylic acid metabolite via hydroxymethyl-derivative.
	Special studies	28–Day Dietary - Dog: NOAEL was 3.0 mg/kg/day for males and 3.4 mg/kg/day for females. The LOAEL was 31.5 mg/kg/day for males and 35.0 mg/kg/day for females based on hepatocellular hypertrophy, vacuolated hepatocytes and elevated serum alkaline phosphatase activity. 28–Day Dietary + 28–Day Recovery - Dog: The microsomal enzyme induction LOAEL was 2.93–3.01 mg/kg/day (the highest dose tested). The NOAEL was 0.77 mg/kg/day. Liver foci test for tumor initiating effects - Rats (males only): Negative for tumor initiating potential in rat liver. 28–Day Dietary Rat: NOAEL = 579.3 mg/kg/day for males and 195.8 mg/kg/day for females. LOAEL=1,934.4 mg/kg/day for males and 572.8 mg/kg/day for females based on increases in alkaline phosphatase, cholesterol and relative liver weights in males; increases in cholesterol and triglycerides as well as absolute and relative liver weights in females.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences. No special uncertainty factors were appropriate or used in the dietary risk assessment.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC. In this case because this is an import tolerance only, there is only dietary risk.

The linear default risk methodology (Q1*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q1* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q1* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for iprovalicarb used for human risk assessment is shown in the following Table 2:

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

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF[1] and Level of Concern for Risk Assessment	Study and Toxicological Effects
Chronic Dietary all populations	NOAEL= 2.6 mg/kg/day UF = 100 Chronic RfD = 0.026 mg/kg/day.	FQPA SF = 1X cPAD = chronic RfD/FQPA SF = 0.026 mg/kg/day.	1–Year Dog Study LOAEL = 24.69 mg/kg/day based on liver effects: swelling, enlargement, distinct lobulation and discoloration, increased absolute and relative liver weights, and accompanying hepatocellular hypertrophy and fatty change, and elevated serum liver enzyme activities.
Cancer (oral)	Q_1* = 4.5 X 10^4 (mg/kg/day)$^{-1}$	.....	Combined chronic toxicity/carcinogenicity, two–year rat study Q_1* based on the combined follicular cell adenomas and carcinomas in the thyroid gland of female rats.

[1] The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* This is the first feed and/or food use for iprovalicarb in the United States. This activity reflects the establishment of a U.S. import tolerance on grape without a U.S. registration and therefore the only exposure that occurs is dietary. Risk assessments were conducted by EPA to assess dietary exposures from iprovalicarb in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Iprovalicarb is of low acute oral toxicity in rats with no adverse effects observed at doses well above the limit test dose (>5,000 mg/kg). In addition, rat and rabbit teratology studies and an acute neurotoxicity rat study, presented no effects indicative of early toxicity. Also, in sub-chronic feeding and reproduction toxicity studies, there were no treatment-related effects that could be attributable to a single dose. It is for these reasons that an acute analysis was not conducted, i. e., due to the lack of any appropriate toxicological end-point. Accordingly, an acute risk analysis was not appropriate and was not conducted.

ii. *Chronic exposure.*In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A DEEM® chronic dietary exposure analysis was performed using tolerance residue levels and 100% crop treated. Data from a grape processing study indicated that iprovalicarb residues did not concentrate in grape processed commodities; therefore, the DEEM® concentration factors for grape (i.e.: juice, juice-concentrate, raisin) were set at 1, indicating no concentration of residues. The DEEM® analysis included wine, sherry and raisin. EPA does not expect the chronic risk to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—CHRONIC (NON-CANCER) EXPOSURE TO IPROVALICARB

Population Subgroup	Dietary exposure (mg/kg/day)	cPAD (mg/kg/day)	%cPAD (Food)
U.S. Population	0.000688	0.026	2.6
All infants (<1 year old)	0.001282	0.026	4.9
Children (1–6 years old)	0.002443	0.026	9.3
Children (7–12 years old)	0.000668	0.026	2.6

iii. *Cancer.* In accordance with the EPA Draft Guidelines for Carcinogen Risk Assessment (July, 1999) the Agency has classified iprovalicarb into the category ''Likely to be carcinogenic to humans'' based on the following weight-of-the-evidence considerations:

Iprovalicarb induced rare and infrequently occurring tumors in Wistar rats. At the high dose, males developed malignant osteosarcomas and females also developed benign transitional cell papillomas of the urinary bladder. At the mid and high doses, females also developed malignant mixed Mullerian tumors of the uterus and follicular cell adenomas and carcinomas in the thyroid gland. Although the incidences of these tumors were low, they are rare or uncommon in Wistar rats. Most of these tumors were induced above the limit dose (1,000 mg/kg/day) which was adequate and not excessively toxic. In mice, no treatment-related increase in tumors was observed in animals treated above the limit dose which was adequate and not excessively toxic.

Iprovalicarb is not mutagenic. Although mechanistic studies suggested that iprovalicarb may not be a tumor initiator, these studies were inadequate to establish the definitive mode of action for tumor induction in rats.

The Agency is using a linear low-dose extrapolation (Q_1*) approach for estimating the human cancer risk based

on the most potent tumor in rats. This approach is supported by the lack of confirmation of the mode of action of iprovalicarb. The most potent Q_1* for iprovalicarb was determined to be 4.5 x 10^{-4} $(mg/kg/day)^{-1}$ based on combined follicular cell adenomas and carcinomas in the thyroid gland of the female rat.

Percent crop treated and/or anticipated residues were not used.

2. *Dietary exposure from drinking water*. Residues in drinking water are not expected to result as a consequence of establishing an import tolerance for iprovalicarb residues in or on grape. Iprovalicarb is not registered for use in the United States. Therefore, exposures through drinking water is unlikely.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Iprovalicarb is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether iprovalicarb has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, iprovalicarb does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that iprovalicarb has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There is no evidence for increased susceptibility of fetuses to *in utero* exposure of iprovalicarb in either the rat developmental or rabbit developmental studies. In both studies, the NOAEL for both maternal and developmental toxicity was the highest dose tested.

Based on the results in the 2-generation reproduction study in rats, a qualitative increased susceptibility of the neonates (as compared with adults) was demonstrated for iprovalicarb. The parental systemic NOAELs were based on decreased body weights and liver weights as well as bile duct proliferation; for females, the parental systemic NOAELs were based on increased relative liver weights. Reproductive LOAELs were not attained (greater than higest dose tested (HDT), limit dose). In offspring, the NOAELs were based on decreased mean litter weight on day 28, reduced body weight during lactation, and increased pup relative liver weights as well as reduced lactation index in F_1. There was considered to be an increase in sensitivity of the neonates (as compared with adults) because of the lower lactation index (decreased pup survival) and decreased pup body weight. Although there is evidence of qualitative susceptibility in the 2-generation reproduction study, the Agency concludes that there is a low level of concern (and no residual uncertainty) because: (1) The increased susceptibility (decrease in pup survival) was seen only at the highest dose tested (2,074 mg/kg/day) which is twice the limit dose; (2) the decrease in pup survival was seen only in one generation (F_1, not replicated in F_2); (3) there are clearly defined NOAELs/LOAELs for parental and offspring toxicity; and (4) the effects seen in the offspring occurred at a much higher dose (192 mg/kg/day) than that used to establish the chronic RFD (NOAEL of 2.6 mg/kg/day).

3. *Conclusion*. There is a complete toxicity database for an import tolerance for iprovalicarb and exposure data are complete or are estimated based on data that reasonably accounts for potential dietary exposures. The Agency concludes that there are reliable data that indicate there are no (residual) concerns for pre- and/or postnatal toxicity following exposure to iprovalicarb and therefore, no additional safety factor (1X) is necessary to protect the safety of infants and children.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. Iprovalicarb is of low acute oral toxicity in rats with no adverse effects observed at doses well above the limit test dose (>5,000 mg/kg). In addition, rat and rabbit teratology studies and an acute neurotoxicity rat study, presented no effects indicative of early toxicity. Also, in sub-chronic feeding and reproduction toxicity studies, there were no treatment-related effects that could be attributable to a single dose. It is for these reasons that iprovalicarb is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to iprovalicarb from food will utilize 2.6% of the cPAD for the U.S. population, 4.9% of the cPAD for All infants (<1 year old), 9.3% of the cPAD for children 1–6 years old and 2.6% of the cPAD for children 7–12 years old. There are no residential uses for iprovalicarb.

In addition, there is not any potential for chronic dietary exposure to iprovalicarb in drinking water because the only use is an import tolerance. There are no U.S. registered products or uses at this time. EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO IPROVALICARB

Population Subgroup	cPAD (mg/kg/day)	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.026	2.6	N/A	N/A	N/A

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO IPROVALICARB—Continued

Population Subgroup	cPAD (mg/kg/day)	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
All infants (<1 year old)	0.026	4.9	N/A	N/A	N/A
Children (1–6 years old)	0.026	9.3	N/A	N/A	N/A
Children (7–12 years old)	0.026	2.6	N/A	N/A	N/A

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Iprovalicarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern. Residues in water, both surface and ground water, are expected to be zero because there are no U.S. uses, only this import tolerance for grape.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Iprovalicarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern. Residues in water, both surface and ground water, are expected to be zero because there are no U.S. uses, only this import tolerance for grape.

5. *Aggregate cancer risk for U.S. population*. The lifetime risk of developing cancer from iprovalicarb exposure is determined for the U.S. population (total) only. The estimated exposure to iprovalicarb is 0.000688 mg/kg/day. Applying the Q_1* of 4.5 x 10^{-4} $(mg/kg/day)^{-1}$ to the exposure value results in a cancer risk estimate of 3.1 x 10^{-7}. This risk is negligible.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to iprovalicarb residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The enforcement analytical residue analytical method is an liquid chromotography/mass spectrometry method. The limit of quantitation is 0.05 ppm in grape, wine, juice and raisin. Recovery and sensitivity of the method is considered adequate (95–114%).

Adequate enforcement methodology (example—gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Paul Golden, USEPA (7503C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (410) 305–2960; e-mail address: www.epa.gov/oppbead1/methods/ (RAM Mailbox).

B. International Residue Limits

No maximum residue levels have yet been established by the CODEX Alimentarius Commission for iprovalicarb in/on grape or raisin.

V. Conclusion

Therefore, tolerances are established for residues of iprovalicarb, [2-methyl-1[[[(1S)-(4-methylphenyl)ethyl] amino]carbonyl] propyl]carbamic acid methylethylester, in or on grape at 2.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–2002–0203 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 21, 2002.

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

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

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters

Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–2002–0203, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Regulatory Assessment Requirements

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

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated:August 15, 2002.

Joseph J. Merenda,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.581 is added to read as follows:

§ 180.581 Iprovalicarb; tolerances for residues.

(a) *General.* Tolerances are established for residues of iprovalicarb, [2-methyl-1[[[(1S)-(4-methylphenyl) ethyl] amino]carbonyl] propyl]carbamic acid methylethylester, in or on the following commodities.

Commodity	Parts per million
Grape[1]	2.0

[1] No U.S. registration as of July 31, 2002.

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

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

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

[FR Doc. 02–21293 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–S

Proposed Rules

Federal Register
Vol. 67, No. 163
Thursday, August 22, 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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 3

[EOIR No. 130I; AG Order No. 2607–2002]

RIN 1125–AA33

Executive Office for Immigration Review; Section 212(c) Relief for Aliens with Certain Criminal Convictions Before April 1, 1997

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Correction to proposed rule.

SUMMARY: This document contains a correction to the proposed rule published Tuesday, August 13, 2002, at 67 FR 52627, relating to relief under section 212(c) of the Immigration and Nationality Act for aliens with certain criminal convictions before April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia, 22041, telephone number (703) 305–0470 (not a toll free call).

SUPPLEMENTARY INFORMATION: The proposed rule that is the subject of these corrections amends Department of Justice regulations by establishing procedures for certain lawful permanent residents (LPRs) to apply for relief from deportation or removal pursuant to former section 212(c) of the Immigration and Nationality Act and sets forth procedures for filing special motions to seek such relief before an Immigration Judge or the Board of Immigration Appeals for LPRs currently in proceedings or under final orders for deportation or removal.

Need for Correction

As published, the proposed rule contains a typographical error that may cause confusion and therefore is in need of clarification. In proposed § 3.44(d), the rule describes the effect of a prior denial of section 212(c) relief on discretionary grounds. As currently published, the rule states that if an LPR had been previously denied relief, a new motion to seek relief would be granted. The actual effect of a previous denial of section 212(c) on discretionary grounds is that a new motion seeking relief would be denied.

Correction

§ 3.44 [Corrected]

1. On page 52632, in the second column, line 13, in paragraph (d) of § 3.44, the words ''will be granted'' are deleted and the words ''will not be granted'' are added in lieu thereof.

Rosemary Hart,

Federal Register Liaison Officer.

[FR Doc. 02–21035 Filed 8–21–02; 8:45 am]

BILLING CODE 4410–30–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 72 and 73

RIN 3150–AG90

Event Notification Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its event notification regulations that apply to an Independent Spent Fuel Storage Installation (ISFSI) and to a Monitored Retrievable Storage (MRS) installation. The proposed rule would also amend safeguards event notification requirements that apply to facilities subject to part 73, such as reactor facilities, fuel cycle facilities, ISFSIs, an MRS, licensees who possess or transport special nuclear material or spent fuel, a geological repository operations area, and the gaseous diffusion plants. With respect to both the event notification requirements and the safeguards event notification requirements, the changes are intended to align these requirements with recent changes to the power reactor event notification requirements. The changes would reduce licensee burden through the consolidation of some notifications and lengthening the reporting period for other notifications. However, some new requirements would be added to permit the NRC to more effectively carry out its responsibilities during emergencies and in responding to public, media, and other stakeholder inquiries during events or conditions at licensees' facilities.

DATES: The comment period expires November 5, 2002. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Web site (*http://ruleforum.llnl.gov*). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking Web site.

The NRC maintains an Agencywide Document 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/NRC/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.*

FOR FURTHER INFORMATION CONTACT: Tony DiPalo, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6191, e-mail, *ajd@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

An advance notice of proposed rulemaking (ANPR) was published on July 23, 1998 (63 FR 39522), notifying the public that the NRC was considering amending its event notification reporting requirements. Although the ANPR was primarily directed at potential changes to power reactor event notification requirements in §§ 50.72 and 50.73, the notice also requested public comments to identify areas where other event notification reporting requirements could be simplified and/or modified to be less burdensome and more risk informed. The issue of potential changes for other reporting requirements was included both in the agenda at a public meeting held on August 21, 1998, to discuss the ANPR, and for the public workshop on September 1, 1998, on Direction Setting Issue (DSI) 13, ''The Role of Industry.'' Pertinent suggestions were provided at those meetings as well as in written comments on the ANPR.

In SECY–99–022, ''Rulemaking to Modify Reporting Requirements for Power Reactors'' (January 20, 1999), the NRC staff presented recommendations that had been made in public comments for changes to reporting requirements beyond those to §§ 50.72 and 50.73, including the following:

- 10 CFR 72.75 contains the requirement for a 4-hour report and 30-day written follow-up report. Revise this requirement to 8 hours and 60 days similar to changes proposed for §§ 50.72 and 50.73.
- 10 CFR 73.71 and Appendix G (Reportable Safeguards Events) to part 73 contain requirements for 1-hour reports. Amend these requirements to 8 hours and 60 days similar to changes proposed for §§ 50.72 and 50.73.

The Commission subsequently issued a final rule revising the event reporting requirements in §§ 50.72, 50.73, and 72.216 (65 FR 63769; October 25, 2000), and directed the NRC staff to consider similar changes to the event notification requirements in parts 72 and 73 under a separate rulemaking. On March 27, 2001, the NRC staff submitted a rulemaking plan to the Commission, ''10 CFR parts 72 and 73—Conforming Requirements of Event Notification'' (SECY–01–0054), to revise the event notification reporting requirements in parts 72 and 73 to more closely align them with those of part 50 reactor facilities. On April 18, 2001, the Commission approved the recommendations in SECY–01–0054 to proceed with the development of a proposed rule to revise the event reporting requirements in parts 72 and 73.

Discussion

This proposed rule would amend the NRC's regulations at 10 CFR part 72 to change several event notification requirements that apply to an Independent Spent Fuel Storage Installation (ISFSI) and a Monitored Retrievable Storage (MRS) installation. The proposed rule would also amend safeguards event notification requirements that apply to facilities subject to part 73, such as reactor facilities, fuel cycle facilities, ISFSIs, an MRS, licensees who possess or transport special nuclear material or spent fuel, a geological repository operations area, and the gaseous diffusion plants. With respect to both the event notification requirements and the safeguards event notification requirements, the changes are intended to align these requirements with recent changes to the power reactor event notification requirements in part 50 made in a final rule issued on October 25, 2000 (65 FR 63769). The NRC evaluated the issues and concerns of the part 50 event notification reporting requirements and considered this regulatory framework as a basis for concluding that similar changes to the event notification reporting requirements in parts 72 and 73 were also warranted. The event reporting requirements of parts 72 and 73 affect both material licensees and nuclear power plant licensees. Most of the facilities subject to the event notification reporting requirements in parts 72 and 73 (power reactors and ISFSIs) are either physically co-located with reactor facilities or are reactor facilities. Most part 72 licensees are also part 50 licensees. These licensees share the same management structure and share the same emergency preparedness organization. Conforming the reporting requirements of part 72 with the revised requirements of part 50 thus will reduce regulatory burden and potential confusion, would maintain safety, and would take advantage of the work already performed to relate risk to reporting requirements for these types of facilities.

With respect to the part 73 event notification requirements, the 30-day period for submitting written follow-up reports for safeguards events should also be extended to 60 days to be consistent with § 50.73. Changing the time limit from 30 days to 60 days does not imply that licensees should take longer than they previously did to develop and implement corrective actions. The NRC expects licensees to take corrective actions on a time scale commensurate with the safety significance of the issue. However, for those cases where it does take longer than thirty days to complete a root cause analysis, this change will result in fewer licensee event reports that require amendment by submittal of an amended report. The extension is based on simplicity for reporting, importance to risk, and having the required reporting time be consistent with the need for NRC action. Furthermore, the increased time for follow-up reporting would allow for the completion of required root cause analyses and engineering evaluations, and full identification of corrective actions after event discovery; preparation of more complete and accurate event reports; and fewer event report revisions and supplemental reports. However, the NRC believes the verbal safeguards event notification requirements should remain at 1 hour because the NRC may need to respond expeditiously to licensee safeguards notifications and notify other licensees and Federal agencies of the event, particularly in light of the heightened threat environment after the terrorist attacks of September 11, 2001.

Revising the parts 72 and 73 event notification reporting requirements to be consistent with those in part 50 would maintain safety and take advantage of the work already performed on the risk impacts of the event notification requirements for part 50 licensees. The revision of parts 72 and 73 would also reduce licensee burden through consolidation of some notifications and lengthening the reporting period for other notifications to correspond to the times required under part 50. The current event notification reporting requirements in part 50 require written notification within 60 days and verbal notification within 1 hour (emergency events), and within 1-hour, 4-hours and 8-hours for some non-emergency events. The need for a 4-hour versus an 8-hour non-emergency notification is based on the urgency of the situation and the NRC's need to take prompt action.

Additionally, the NRC would remove § 72.216, ''Reports.'' Section 72.216 does not contain separate requirements, but merely directs a part 72 general licensee to comply with the reporting requirements of §§ 72.74 and 72.75. However, the need for this section was obviated with the addition of § 72.13, ''Applicability,'' to the part 72 regulations in a final rule issued on August 21, 2000 (65 FR 50606). Section 72.13 contains direction on the part 72 regulations that apply to specific licensees, general licensees, or certificate holders. Section 72.13(c) currently requires a general licensee to

comply with §§ 72.74 and 72.75. Therefore, § 72.216 is no longer needed and would be removed and reserved. In addition, § 72.9 would be revised as a conforming change because of the removal of § 72.216. Also, the reference to § 72.19 would be removed from § 72.9 because there is no § 72.19 in part 72.

The NRC believes that consideration of the proposed changes is consistent with two of NRC's strategic performance goals to reduce unnecessary regulatory burden on stakeholders and to increase public confidence in NRC's regulatory process to maintain safety.

Discussion of Proposed Amendments Section-by-Section

This proposed rule would make several changes to the event notification reporting requirements in parts 72 and 73 that would align the event notification requirements for ISFSIs and MRS facilities and safeguards event notification requirements more closely with recent changes to §§ 50.72 and 50.73. These changes would reduce licensee burden through the consolidation of some notifications and lengthening of reporting periods for others. Additionally, some new requirements would be added to permit the NRC to more effectively carry out its responsibilities during emergencies and in responding to public, media, and other stakeholder inquiries. Finally, some changes would be made to improve organization, clarification, and readability through the use of plain language.

10 CFR 72.9 Information collection requirements: OMB approval.

Paragraph (a) would remain unchanged.

Paragraph (b) would be revised to remove §§ 72.19 and 72.216 as a conforming change.

10 CFR 72.75 Reporting requirements for specific events and conditions.

Paragraph (a) would remain unchanged.

Paragraph (b) would be split into two new paragraphs (b) and (c) for 4-hour and 8-hour notifications, respectively. In new paragraph (b), the existing 4-hour notification requirement remains unchanged for departing from a certificate condition or technical specification during an emergency (current paragraph (b)(4)); a new requirement would be added to notify the NRC when another Government agency is notified or a news release is planned to permit the NRC to promptly respond to public, media, and other stakeholder inquiries during events; and lastly, the current 4-hour notifications would be removed for events that require immediate action to avoid exposure or unplanned fires or explosions (current paragraphs (b)(1) and (b)(6)) because they are redundant with the requirements in paragraph (a) above.

In new paragraph (c), the existing 4-hour event notifications would be changed to 8-hour notifications for a defect in any spent fuel storage structure, system, or component important to safety [1] (current paragraph (b)(2)) a significant reduction in the effectiveness of any spent fuel storage confinement system in use (current paragraph (b)(3)), and an event that requires the transport of a radioactively contaminated person to an offsite medical facility for treatment (revision of paragraph (b)(5)). These changes reduce unnecessary licensee burden consistent with Part 50 event notification requirements.

Existing paragraph (c) for 24-hour reports would be redesignated as paragraph (d) and revised as follows: The current notification would be retained for events in which equipment important to safety fails to function (current paragraph (c)(2)). The requirement for notification of unplanned contamination events requiring controls restricting worker access for greater than 24 hours would be removed because such an event occurring at an ISFSI or MRS does not rise to a level of significance that would warrant notification. Facilities that store and manipulate spent fuel assemblies are by their very nature subject to identification of contamination outside of posted radiological contamination control areas (i.e., hot particles). The NRC considers the identification, control, and decontamination of these areas a routine radiation protection function, not an event requiring NRC notification—even if it takes the licensee more than 24 hours to clean up the contamination. Furthermore, although these 24-hour verbal reports are due within 24 hours of the discovery of the event, their significance requires that this notification requirement would be revised to permit these notifications to be delayed to the next working day (i.e., 8 a.m. Eastern time) when the end of the 24-hour period falls outside of normal NRC working hours (7:30 a.m.–5 p.m. Eastern time), a weekend, or a Federal holiday.

Current paragraph (d) would be split into three paragraphs and redesignated as new paragraphs (e), (f), and (g) (i.e., initial verbal notifications, follow-up verbal notifications, and written notifications) to provide greater clarity and consistency with part 50 event notification requirements.

In new paragraph (e), the current requirement would be retained to notify the NRC Operations Center by telephone of emergency and non-emergency conditions (current paragraph (d)(1)). A new requirement would be added to identify the Emergency Class or the 4-hour, 8-hour, or 24-hour notification to eliminate confusion and facilitate NRC response to the emergency. The current requirement would remain unchanged to provide supporting information (current paragraphs (d)(1)(i) through (v)).

In new paragraph (f), new requirements would be added for licensees to make follow-up notifications to immediately report degrading conditions, declaration of any Emergency Class, change of an Emergency Class, termination of the Emergency Class, the results of evaluations, the effectiveness of responses or protective measures, and information on unexpected ISFSI or MRS behavior. These added requirements would ensure that the information on a degrading condition or termination of the event is promptly communicated to the NRC. Consistent with current policy for reactor licensees, the NRC expects a part 72 licensee to make any follow-up notifications to the NRC as soon as possible, but no later than 1 hour from the time of identification. Additionally, a requirement would be added to maintain an open, continuous communication channel with the NRC Operations Center upon request by the NRC. This requirement would be consistent with the current part 50 event reporting requirements and would ensure that during an ongoing emergency, the communications between the licensee and the NRC are not interrupted by the inability to complete a phone call when telephone circuits could be temporarily overloaded.

In new paragraph (g), the current 30-day requirement would be revised to require that written reports be submitted within 60 days (current paragraph (d)(2)) reducing the occurrence of supplemental reports and licensee burden. The requirements for human performance events (current paragraphs

[1] 10 CFR 72.3—*Definitions.* Structures, systems, and components important to safety means those features of the ISFSI, MRS, and spent fuel storage cask whose functions are: To maintain the conditions required to store spent fuel or high-level radioactive waste safely; to prevent damage to the spent fuel or the high-level radioactive waste container during handling and storage; or to provide reasonable assurance that spent fuel or high-level radioactive waste can be received, handled, packaged, stored, and retrieved without undue risk to the health and safety of the public.

(d)(2)(i) through (d)(7), except (d)(2)(ii)(I)) would be revised to be consistent with currently revised § 50.73(b)(2)(ii)(J). Additionally, in paragraph (g)(2)(xii) the requirement to specify the quantities and chemical and physical forms of the material involved in the event would be expanded to include reactor-related greater-than-class-C (GTCC) waste because the Commission recently added authority to part 72 for the storage of reactor-related GTCC waste (see 66 FR 51823; October 11, 2001). Furthermore, a new requirement would be added on legibility of reports (new paragraph (g)(8)) to be consistent with the current § 50.73(e).

New paragraph (h) would be added to indicate that the Commission may require a licensee to submit supplemental information if this information is necessary for the NRC to obtain a complete understanding of an unusually complex or significant event.

New paragraph (i) would be added to clarify that the requirements of § 72.75 apply: after a specific part 72 license has been issued to an applicant; after a part 72 general licensee has first placed spent fuel on the ISFSI storage pad (if the ISFSI is located inside the reactor facility's collocated protected area) or when the spent fuel is being transferred outside of the reactor facility's protected area to the ISFSI storage pad (if the ISFSI storage pad is located outside of the reactor facility's protected area); and to non-emergency events that occurred within 3 years of the date of discovery. This paragraph would reduce licensee confusion on when the provisions of this section become applicable. The 3-year limitation would eliminate notifications for events that are no longer significant and would be consistent with the current §§ 50.72 and 50.73.

10 CFR 72.216 Reports.

This section would be removed and reserved because it is no longer needed.

10 CFR 73.71 Reporting of safeguards events.

In paragraph (a)(4), the period for submitting written follow-up notifications would be extended from 30 days to 60 days. Changing the time limit from 30 days to 60 days does not imply that licensees should take longer than they previously did to develop and implement corrective actions. The NRC expects licensees to take corrective actions on a time scale commensurate with the safety significance of the issue. However, for those cases where it does take longer than thirty days to complete a root cause analysis, this change will result in fewer licensee event reports that require amendment by submittal of an amended report. The revision to the requirements for submission of written followup safeguards reports will not affect the NRC's ability to promptly respond to safeguards events, because the written reports are not relied upon by NRC staff for prompt response to significant events, but instead the reports are used for such followup actions as considering the need for enforcement action, evaluating whether a generic communication may be necessary, and evaluating the adequacy of existing NRC regulations and guidance. The extension is based on simplicity for reporting, importance to risk, and the required reporting time consistent with the need for prompt NRC action. Additionally the increased time for follow-up reporting would allow for: the completion of the required root cause analyses and engineering evaluations, and fully identify corrective actions after event discovery; preparation of more complete and accurate event reports; and, fewer event report revisions and supplemental reports, thus reducing unnecessary licensee burden. This proposed change would also be consistent with the Commission's actions in the final rule revising § 50.73. In paragraph (d), the period for submitting written follow-up notifications also would be extended from 30 to 60 days.

Appendix G to Part 73 Reportable Safeguards Events.

As a conforming change to § 73.71(a)(4), paragraph I of Appendix G to part 73 would also be revised to require that the period for submitting written follow-up notifications be extended from 30 days to 60 days.

Criminal Penalties

For the purpose of section 223 of the Atomic Energy Act (AEA), the Commission is proposing to amend 10 CFR parts 72 and 73 under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

Agreement State Compatibility

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

Plain Language

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

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would amend its regulations to change several event notification requirements for ISFSI and MRS facilities and safeguards event notification requirements to more closely align them with event notifications for reactor facilities. The changes would reduce licensee burden through the consolidation of some notifications and lengthening the reporting period for other notifications. Some new requirements would be added to permit the NRC to more effectively carry out its responsibilities during emergencies and in responding to public, media, and other stakeholder inquiries. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction

Act of 1995 (44 U.S.C. 3501 *et seq.*) These information collection requirements have been submitted to the Office of Management and Budget (OMB) for approval. Existing requirements were approved by the OMB, approval numbers 3150–0002 and –0132.

The burden to the public for these information collections in 10 CFR parts 72 and 73 is estimated to average 24 hours per response for part 72 and 13 hours per response for part 73, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0002 and –0132), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by September 23, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the draft regulatory analysis and is specifically requesting stakeholder input on: (1) The number of reports per year a typical licensee could be anticipated to make under these modified event reporting requirements, (2) the number of hours per report a typical licensee could be expected to expend in preparing and submitting these reports, and (3) the number of NRC staff hours that would be saved by extending the period for submitting written reports from 30 to 60 days.

The regulatory analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD, and in the NRC's interactive rulemaking Web site as described under the **ADDRESSES** heading. Single copies of the regulatory analysis may be requested from Tony DiPalo, telephone (301) 415–6191, e-mail, *ajd@nrc.gov* of the Office of Nuclear Material Safety and Safeguards.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The majority of companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The Commission has determined that, as in the final rule 10 CFR parts 50 and 72, ''Reporting Requirements for Nuclear Power Reactors and Independent Spent Fuel Storage Installations at Power Reactor Sites,'' the backfit rule (10 CFR 50.109, 72.62) does not apply to information collection and reporting requirements such as those reporting requirements contained in this proposed rule. The proposed rule does not involve any provisions that would impose backfits as defined in the backfit rule. Thus, a backfit analysis is not required.

List of Subjects

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistle blowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transport, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR parts 72 and 73.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR RELATED GREATER THAN CLASS C WASTE

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

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

Section 72.44(g) also issued under secs. 142 (b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162 (b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec.133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.9, paragraph (b) is revised to read as follows:

§ 72.9 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 72.7, 72.11, 72.16, 72.22 through 72.34, 72.42, 72.44, 72.48 through 72.56, 72.62, 72.70 through 72.82, 72.90, 72.92, 72.94, 72.98, 72.100, 72.102, 72.104, 72.108, 72.120, 72.126, 72.140 through 72.176, 72.180 through 72.186, 72.192, 72.206, 72.212, 72.218, 72.230, 72.232, 72.234, 72.236, 72.240, 72.242, 72.244, and 72.248.

3. Section 72.75 is revised to read as follows:

§ 72.75 Reporting requirements for specific events and conditions.

(a) *Emergency notifications.* Each licensee shall notify the NRC Operations Center upon the declaration of an emergency as specified in the licensee's approved emergency plan addressed in § 72.32 of this part. The licensee shall notify the NRC immediately after notification of the appropriate State or local agencies, but not later than one hour after the time the licensee declares an emergency.

(b) *Non-emergency notifications.* Four-hour reports—Each licensee shall notify the NRC as soon as possible but not later than four hours after the discovery of any of the following events or conditions involving spent fuel, HLW, or reactor related GTCC waste;

(1) An action taken in an emergency that departs from a condition or a technical specification contained in a license or certificate of compliance issued under this part when the action is immediately needed to protect the public health and safety, and no action consistent with license or certificate of compliance conditions or technical specifications that can provide adequate or equivalent protection is immediately apparent.

(2) Any event or situation related to the health and safety of the public or onsite personnel, or protection of the environment, for which a news release is planned or notification to other government agencies has been or will be made. Such an event may include an onsite fatality or inadvertent release of radioactively contaminated materials.

(c) *Non-emergency notifications.* Eight-hour reports. Each licensee shall notify the NRC as soon as possible but not later than eight hours after the discovery of any of the following events or conditions involving spent fuel, HLW, or reactor related GTCC waste;

(1) A defect in any spent fuel storage structure, system, or component that is important to safety.

(2) A significant reduction in the effectiveness of any spent fuel storage confinement system during use.

(3) Any event requiring the transport of a radioactively contaminated person to an offsite medical facility for treatment.

(d) *Non-emergency notifications.* 24-hour reports. Each licensee shall notify the NRC within 24 hours after the discovery of any of the following events involving spent fuel or HLW:

(1) An event in which important to safety equipment is disabled or fails to function as designed when:

(i) The equipment is required by regulation, license condition, or certificate of compliance to be available and operable to prevent releases that could exceed regulatory limits, to prevent exposures to radiation or radioactive materials that could exceed regulatory limits, or to mitigate the consequences of an accident; and

(ii) No redundant equipment was available and operable to perform the required safety function.

(2) For notifications made under this paragraph, the licensee may delay the notification to the NRC if the end of the 24-hour period occurs outside of the NRC's normal working day (*i.e.,* 7:30 a.m. to 5 p.m. Eastern time), on a weekend, or a Federal holiday. In these cases, the licensee shall notify the NRC before 8 a.m. Eastern time on the next working day.

(e) *Initial notification.* Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees shall make reports required by paragraphs (a), (b), (c), or (d) of this section by telephone to the NRC Operations Center.[2]

(2) When making a report under paragraphs (a), (b), (c), or (d) of this section, the licensee shall identify:

(i) The Emergency Class declared; or

(ii) Paragraph (b), ''four-hour reports,'' paragraph (c), ''eight-hour reports,'' or paragraph (d), ''24-hour reports,'' as the paragraph of this section requiring notification of the non-emergency event.

(3) To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) The caller's name and call back telephone number;

(ii) A description of the event, including date and time;

(iii) The exact location of the event;

(iv) The quantities and chemical and physical forms of the spent fuel, HLW, or reactor-related GTCC waste; and

(v) Any personnel radiation exposure data.

(f) *Follow-up notification.* With respect to the telephone notifications made under paragraphs (a), (b), or (c) of this section, in addition to making the required initial notification, each licensee shall during the course of the event:

(1) Immediately report any further degradation in the level of safety of the ISFSI or MRS or other worsening conditions, including those that require the declaration of any of the Emergency Classes, if such a declaration has not been previously made; or any change from one Emergency Class to another; or a termination of the Emergency Class.

(2) Immediately report the results of ensuing evaluations or assessments of ISFSI or MRS conditions; the effectiveness of response or protective measures taken; and information related to ISFSI or MRS behavior that is not understood.

(3) Maintain an open, continuous communication channel with the NRC Operations Center upon request by the NRC.

(g) *Preparation and submission of written reports.* Each licensee who makes an initial notification required by paragraphs (a), (b), (c), or (d) of this section shall also submit a written follow-up report to the Commission within 60 days of the initial notification. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all the necessary information and the appropriate distribution is made. These written reports must be submitted to the NRC, in accordance with § 72.4. These reports must include the following information:

(1) A brief abstract describing the major occurrences during the event, including all component or system failures that contributed to the event and significant corrective action taken or planned to prevent recurrence;

(2) A clear, specific, narrative description of the event that occurred so that knowledgeable readers conversant with the design of an ISFSI or MRS, but not familiar with the details of a particular facility, can understand the complete event. The narrative description must include the following specific information as appropriate for the particular event:

(i) The ISFSI or MRS operating conditions before the event;

[2] The commercial telephone number of the NRC Operations Center is (301) 816–5100. Those licensees with an available Emergency Notification System (ENS) shall use the ENS to notify the NRC Operations Center.

(ii) The status of structures, components, or systems that were inoperable at the start of the event and that contributed to the event;

(iii) The dates and approximate times of occurrences;

(iv) The cause of each component or system failure or personnel error, if known;

(v) The failure mode, mechanism, and effect of each failed component, if known;

(vi) A list of systems or secondary functions that were also affected for failures of components with multiple functions;

(vii) For wet spent fuel storage systems only, after the failure that rendered a train of a safety system inoperable, an estimate of the elapsed time from the discovery of the failure until the train was returned to service;

(viii) The method of discovery of each component or system failure or procedural error;

(ix) For each human performance related root cause, the licensee shall discuss the cause(s) and circumstances;

(x) For wet spent fuel storage systems only, any automatically and manually initiated safety system responses;

(xi) The manufacturer and model number (or other identification) of each component that failed during the event;

(xii) The quantities and chemical and physical forms of the spent fuel, HLW, or reactor-related GTCC waste;

(3) An assessment of the safety consequences and implications of the event. This assessment must include the availability of other systems or components that could have performed the same function as the components and systems that failed during the event;

(4) A description of any corrective actions planned as a result of the event, including those to reduce the probability of similar events occurring in the future;

(5) Reference to any previous similar events at the same facility that are known to the licensee;

(6) The name and telephone number of a person within the licensee's organization who is knowledgeable about the event and can provide additional information concerning the event and the facility's characteristics;

(7) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name;

(8) The reports submitted under the provisions of this section must be of sufficient quality to permit legible reproduction and optical scanning.

(h) Supplemental information. The Commission may require the licensee to submit specific additional information beyond that required by paragraph (g) of this section if the Commission finds that supplemental material is necessary for complete understanding of an unusually complex or significant event. These requests for supplemental information will be made in writing, and the licensee shall submit, as specified in § 72.4, the requested information as a supplement to the initial written report.

(i) *Applicability.* The requirements of this section apply to—

(1)(i) Licensees issued a specific license under § 72.40; and

(ii) Licensees issued a general license under § 72.210, after the licensee has placed spent fuel on the ISFSI storage pad (if the ISFSI is located inside the collocated protected area, for a reactor licensed under part 50 of this chapter) or after the licensee has transferred spent fuel waste outside the reactor licensee's protected area to the ISFSI storage pad (if the ISFSI is located outside the collocated protected area, for a reactor licensed under part 50 of this chapter).

(2) Those non-emergency events specified in paragraphs (b), (c), and (d) of this section that occurred within 3 years of the date of discovery

§ 72.216 [Removed and Reserved]

4. Section 72.216 is removed and reserved.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

5. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

6. In § 73.71, paragraph (a)(4) and (d) are revised to read as follows:

§ 73.71 Reporting of safeguards events.

(a) * * *

(4) The initial telephonic notification must be followed within 60 days by a written report submitted to the U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555–0001. The licensee shall also submit one copy to the appropriate NRC Regional Office listed in appendix A to this part. The report must include sufficient information for NRC analysis and evaluation.

* * * * *

(d) Each licensee shall submit to the Commission the 60-day written reports required under the provisions of this section that are of a quality that will permit legible reproduction and processing. If the facility is subject to § 50.73 of this chapter, the licensee shall prepare the written report on NRC Form 366. If the facility is not subject to § 50.73 of this chapter, the licensee shall not use this form but shall prepare the written report in letter format. The report must include sufficient information for NRC analysis and evaluation.

* * * * *

7. In Appendix G to Part 73, the introductory sentence in paragraph I is revised to read as follows:

Appendix G to Part 73—Reportable Safeguards Events

* * * * *

I. Events to be reported within one hour of discovery, followed by a written report within 60 days.

* * * * *

Dated at Rockville, Maryland, this 6th day of August, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–21414 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2002—14]

Contribution Limitations and Prohibitions

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission seeks comments on proposed changes to its rules relating to contribution limitations and prohibitions under the Federal Election Campaign Act of 1971, as amended (''FECA'' or ''the Act''). The proposed rules are based on the Bipartisan Campaign Reform Act of 2002 (''BCRA''), which increases contribution limits for individuals and political committees; prohibits contributions and donations by minors to certain political committees; and prohibits contributions, donations, and certain expenditures and disbursements by foreign nationals. Please note that the draft rules that follow do not represent

a final decision by the Commission on the issues presented by this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before September 13, 2002. If the Commission receives sufficient requests to testify, it will hold a hearing on these proposed rules on October 3, 2002, at 10 a.m. Persons wishing to testify at the hearing should so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *BCRAPart110@fec.gov* and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web Site within ten business days of the close of the comment period. If the Commission conducts a hearing on these proposed rules, the hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, or Attorneys Mr. Michael Marinelli (contribution limitations), Ms. Dawn Odrowski (minor contributions), or Ms. Anne A. Weissenborn (foreign nationals), 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Public Law 107–155, 116 Stat. 81 (March 27, 2002), contains extensive detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* This Notice of Proposed Rulemaking (''NPRM'') is part of a continuing series of rulemakings the Commission is publishing over the next several months in order to meet the rulemaking deadlines set out in BCRA.

This NPRM addresses the increase in contribution limits, the prohibition on contributions and donations by minors to certain political committees, and the prohibition on contributions, donations, and certain expenditures by foreign nationals. These changes to the Act addressed in this NPRM are only a few of many changes made to the Act by BCRA. Other rulemakings have addressed or will address: (1) Non-Federal funds or ''soft money'' (promulgated on June 22, 2002, 67 FR 49063 (July 29, 2002)); (2) coordinated and independent expenditures; [1] (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) electioneering communications (for NPRM, *see* 67 FR 51131 (Aug. 7, 2002)); (5) other new and amended provisions, including inaugural committees, fraudulent solicitations, disclaimers, personal use of campaign funds, and civil penalties; (6) reporting; and (7) reorganization of ''contribution'' and ''expenditure'' definitions (for final rules, *see* 67 FR 50582, August 5, 2002). The reporting NPRM will contain the reporting rules proposed in several of the other NPRMs and will restructure 11 CFR part 104 to make the reporting rules more user-friendly. Section 402(c) of BCRA establishes a 270-day deadline for the Commission to promulgate these rules. Since BCRA was signed into law on March 27, 2002, the 270-day deadline is December 22, 2002.

Introduction

The Act limits the amounts that individuals and entities are permitted to contribute, and who may contribute those amounts, to candidates, political committees, and political party committees for use in Federal elections. 2 U.S.C. 441a and 441e. BCRA amends the FECA by increasing some of the contribution limits in 2 U.S.C. 441a (but only for contributions made on or after January 1, 2003), and by prohibiting certain contributions by minors in new 2 U.S.C. 441k. BCRA also amends 2 U.S.C. 441e, which prohibits contributions, donations, and expenditures made by foreign nationals. The proposed rules would implement these amendments.

[1] This NPRM will also address certain communications that are coordinated with candidate or political party committees that would otherwise constitute electioneering communications.

Increases in Contribution Limits

1. Increases in the Contribution Limits for Individuals (11 CFR 110.1 and 110.5)

The Act limits the amount that individuals may contribute to candidates, political committees, and political parties for use in Federal elections. 2 U.S.C. 441a. The pre-BCRA provisions of the Act permit persons to contribute up to $1,000 to Federal candidates per election and up to $20,000 per year to political committees established and maintained by national political parties.[2] For contributions made on or after January 1, 2003, BCRA amends 2 U.S.C. 441a(a)(1)(A) to increase the amount persons can contribute to Federal candidates to $2,000 per election and amends 2 U.S.C. 441a(a)(1)(B) to increase the amount that may be contributed by individuals to committees maintained and controlled by national political parties to $25,000 per year.

Current 11 CFR 110.1(b)(1) and (c)(1), which contain the contribution limits in 2 U.S.C. 441a(a)(1)(A) and (B), would be amended to incorporate the new increased contribution limits. Proposed paragraph (b)(1) would establish the new base contribution limit of $2,000 that a person may contribute to a candidate for election to any Federal office. Under proposed paragraph (b)(1)(i), that limit of $2,000 would be increased if necessary each election cycle by the difference in the price index in accordance with proposed 11 CFR 110.17, which is discussed below. Once the limit is increased, proposed paragraph (b)(1)(ii) would establish the effective dates of the increase from the day after the last general election to the day of the next general election. Because the contribution limits could change every two years, depending upon the consumer price index, proposed paragraph (b)(1)(iii) states that the Commission would publish the new contribution limits in effect in the **Federal Register** every odd-numbered year and maintain that information on its Web Site. Proposed section 110.1(c)(1) would parallel proposed section 110.1(b)(1), except it would establish the base contribution limit that

[2] The Act also permits a person to contribute up to $5,000 per year to any other political committees. 2 U.S.C. 441a (a)(1)(C). This limit was left unchanged by BCRA. However BCRA did revise 2 U.S.C. 441a(a)(1) by adding paragraph (D), which permits persons to make up to $10,000 in contributions to a political committee established and maintained by a State committee of a political party in a calendar year. This provision is addressed in a separate rulemaking. See Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money Final Rules, 67 FR 49063 (July 29, 2002).

a person would be able to make to a political committee of a national political party at $25,000 per calendar year. Proposed paragraphs (c)(1)(i), (ii), and (iii) would mirror proposed paragraph (b)(1)(i), (ii), and (iii), applying the same indexing as necessary each election cycle with the same effective dates.

The limit for the calendar year when the change becomes effective would be affected as well. These new contribution limits would be effective January 1, 2003, and would apply to contributions made on or after that date. The Commission seeks comments on whether these increased contribution limits should apply to elections that occurred before the effective date of the increase in the contribution limits. For example, if the contribution limit were to be increased from $2,000 to $2,100, effective November 3, 2004, and contributor X makes a $2,000 contribution to candidate Y in October of 2004, could contributor X make a $100 contribution after November 3, 2004 designated for the general election, provided that candidate Y's principal campaign committee still has net debts outstanding?

BCRA also amends the provisions in the Act that establish the aggregate contributions that may be made by individuals. Under 2 U.S.C. 441a(a)(3), individuals have been permitted to make no more than $25,000 in aggregate contributions per calendar year. This section has been revised by BCRA to establish new bi-annual aggregate limits that permit individuals to make up to $95,000 in contributions, including up to $37,500 in contributions to candidates and their authorized committees and up to $57,500 in contributions to any other committees. 2 U.S.C. 441a(a)(3)(A) and (B). The $57,500 aggregate contribution limit contains a further restriction in that no more than $37,500 of this amount may be given to committees that are not the political committees of national political parties. 2 U.S.C. 441a(a)(3)(B).

Current 11 CFR 110.5(b) would be amended to incorporate the increased bi-annual aggregate contribution limits, which will be effective January 1, 2003. Proposed paragraph (b)(1)(i) would contain the new bi-annual aggregate limit for contributions to candidates and their authorized committees. Proposed paragraph (b)(1)(ii) would contain the new bi-annual aggregate limit for contributions to other political committees.

However, 2 U.S.C. 441a(i)(1)(C) and 441a–1(a)(1)(B) contain an important exception to the contribution limits that has implications for the bi-annual aggregate limits for individuals. Under these sections, the individual contribution limits to candidates for the U.S House of Representatives and U.S. Senate are increased if the candidate is opposing another candidate who makes expenditures from his or her personal funds above a certain threshold. Contributions made under these provisions do not apply to the individual contributor's bi-annual aggregate limits. 2 U.S.C. 441a(i)(1)(C) and 441a–1(a)(1)(B). Proposed paragraph 110.5(b)(1)(iii) would reflect this exception, which will be addressed in greater detail in a separate NPRM concerning the so-called ''millionaires' amendment.''

Proposed paragraph (b)(2) of 11 CFR 110.5 would reference the increase, if necessary, in the bi-annual aggregate limits by the percent difference in the price index as described in proposed 11 CFR 110.17 (*see* the discussion below). Proposed paragraph (b)(3) would provide that the time period in which the price indexing applies also applies to the aggregation of contributions for purposes of the application of the bi-annual aggregate limits. An example of how the time period would operate for both the increase and the aggregation would also be included in proposed paragraph (b)(3). Proposed paragraph (b)(4) would restate the Commission's intention to publish information regarding the adjusted limits in the **Federal Register** and on the Commission's web site.

2. Increases in the Limits for Contributions by Party Committees to Senate Candidates (11 CFR 110.2)

Under pre-BCRA 2 U.S.C. 441a(h), the Republican and Democratic Senatorial campaign committees or the national committee of a political party or any combination of such committees were permitted to contribute $17,500 to a candidate for election or nomination to the U.S. Senate during the year of the election. BCRA amends this section of the Act to increase the amount that may be contributed by these committees to senatorial candidates to $35,000 on or after January 1, 2003. Current 11 CFR 110.2(e), which contains this limit, would be amended to increase the limit to $35,000.

3. Extension of Indexing to Inflation for Some Contribution Limitations (11 CFR 110.5 and 110.17)

Pre-BCRA 2 U.S.C. 441a(c) mandated yearly indexing to inflation of the expenditure limitations established by 2 U.S.C. 441a(b) (the limits on expenditures by candidates for the office of President of the United States who accept public funding) and 2 U.S.C. 441a(d) (the limits on expenditures by national party committees, State party committees, or their subordinate committees in connection with the general election campaign of candidates for Federal office).

BCRA amends 2 U.S.C. 441a(c) to extend the inflation indexing to: the limitations for contributions made by persons under 2 U.S.C. 441a(a)(1)(A) and 441a(a)(1)(B); the bi-annual aggregate contribution limits for individuals now found at 2 U.S.C. 441a(a)(3); and the limitation for contributions made to U.S. Senate candidates by certain party committees at 2 U.S.C. 441a(h). 2 U.S.C. 441a(c)(1)(B). The adjustments for inflation for 2 U.S.C. 441a(a)(1)(A), 441a(a)(1)(B), 441a(a)(3) and 441a(h) are to be made only in odd-numbered years and such increases will be in effect for the 2-year period beginning on the first day following the date of the general election in the year preceding and ending on the date of the next general election. 2 U.S.C. 441a(c)(1)(C).

BCRA, however, presents a conflict concerning the interaction of 2 U.S.C. 441a(a)(3), which establishes the bi-annual aggregate contribution limits for individuals, and 2 U.S.C. 441a(c)(1)(C), which mandates indexing to inflation of these bi-annual aggregate limits. Section 441a(a)(3) of the Act specifically provides that the bi-annual aggregate limits for contributions made by individuals should apply during the period that begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year. For example, the dollar aggregate limits operate from January 1, 2005 to December 31, 2006. However, the inflation indexing for this provision as applied by 2 U.S.C. 441a(c)(1)(C) would operate from the day after the general election to the date of the next general election, e.g. November 3, 2004 to November 7, 2006, after which date the next two year inflation indexing period would alter the bi-annual aggregate contribution limits again. Thus, these competing time limits seem to dictate different contributions limits for the period from November 3, 2004 to January 1, 2005 and could not be applied simultaneously. Therefore, the conflict between 2 U.S.C. 441a(a)(3) and 441a(c)(1)(C) must be resolved to determine the time period in which the bi-annual aggregate contribution limits apply.

It is one principle of legislative interpretation that where two provisions of a statute are in conflict, the conflicting provision which is last in time or last in order of arrangement

prevails. *See Inter-Continental Promotions* v. *MacDonald*, 367 F.2d 293 (5th Cir. 1966). Following this principle, because 2 U.S.C. 441a(c)(1)(C) appears later than 2 U.S.C. 441a(a)(3) in order of arrangement, both in BCRA and as codified in the Act, 2 U.S.C. 441a(c)(1)(C) would determine the time period of the bi-annual contribution limits for 2 U.S.C. 441a(a)(3). Therefore, the proposed rules would set the time period for the bi-annual contribution limits from the day after the general election, i.e. the first Wednesday following the first Monday in November of an even numbered year, to the date of the next general election, i.e. the first Tuesday following the first Monday in November of the next even numbered year. *See* proposed 11 CFR 110.5(b) and 110.17 below. Under this approach, runoff elections following the general election would not postpone the increase in the annual contribution limits. The Commission seeks comment on whether this interpretation of the statutory language and the proposed time period for the bi-annual aggregate contribution limits is appropriate.

Another question for the interpretation of the BCRA amendments to 2 U.S.C. 441a(c) relates to a timing issue in the administrative application of the inflation indexing. The increased contribution limits of 2 U.S.C. 441a(a)(1)(A) and (B), 441a(a)(3), and 441a(h) apply to contributions made on or after January 1, 2003. However, under the interpretation outlined above, 2 U.S.C. 441a(c)(1)(C) requires that these same contribution limits be increased through indexing for inflation in odd-numbered years with the increase in effect starting with the day following the last general election in the previous year. This could imply that initial contribution limits authorized by BCRA to take legal effect on January 1, 2003, should also be increased by the difference in the price index. Comments are requested on this possible interpretation, which is not included in the proposed revisions to section 110.5 below.

A further change in 2 U.S.C. 441a(c) is the introduction of a rounding provision for all the amounts that are increased by the indexing to inflation in 2 U.S.C. 441a. If the final amount is not a multiple of $100, it is rounded to the nearest multiple of $100. 2 U.S.C. 441a(c)(1)(B)(iii).

The current regulation at 11 CFR 110.9(c) that describes the expenditure limits subject to inflation indexing does not include any of the inflation indexing discussed above. In order to address the price indexing for the new contributions and expenditures limitations in a comprehensive manner, the Commission proposes to add new section 110.17 to track the changes to 2 U.S.C. 441a(c). In this new section 110.17, proposed paragraph (a) would restate current section 110.9(c) for the price index increases that previously existed for the party committee and Presidential candidate spending limits established by 11 CFR 110.7 and 110.8.

However, proposed paragraph (a) would contain one important change from current 11 CFR 110.9(c). Section 110.9(c) had incorrectly stated that the expenditure limitations established by sections 110.7 and 110.8 would be increased by the annual percent difference of the price index, as certified to the Commission by the Secretary of Labor. Section 441a(c) of the Act does not use an annual percent difference of the price index to calculate the increases. Instead, it requires the use of the percent difference between the price index for the 12 months preceding the beginning of the calendar year in which the change is made and the base period. For party committee expenditures limitations and Presidential candidate expenditures limitations, the base period is calendar year 1974 with the change being in effect for that calendar year. Proposed paragraph (a) would correctly state the standard to be applied and would delete the term ''annual'' from the regulation.

Proposed paragraph (b) of new section 110.17 would track 2 U.S.C. 441a(c)(1)(B) and state that the following contributions limits would be indexed to inflation: Proposed 11 CFR 110.1(b)(1) (limits for individuals contributing to candidates and authorized political committees); proposed 110.1(c)(1) (limits for contributions made to national party committees); proposed 110.2(e) (limits for contributions made by party committees to Senatorial candidates); and proposed 110.5 (bi-annual aggregate contribution limits for individuals). Consequently, current paragraph 110.9(c) would be removed.

Proposed section 110.17(b)(1) would specify that these contribution limitations would be increased during odd numbered years and that the increased limit would be in effect for a two-year period. Proposed paragraph (b)(2) would establish that 2001 is the base year for the calculation of the price index difference. Proposed paragraph 110.17(c) would implement the new rounding provision found at 2 U.S.C. 441a(c)(B)(iii).

The Act at 2 U.S.C. 441a(c)(2)(A) and proposed paragraph 110.17(d) specifically identify the price index as the average over a calendar year of the Consumer Price Index (all items-United States city average) published by the Bureau of Labor Statistics. The Department of Labor computes the CPI using two population groups: All Urban Consumers (CPI–U) and Clerical Workers (CPI–W). The CPI–U represents approximately 87% of the total United States population while the CPI–W, a subset of the CPI–U, represents 32% of the total United States population.[3] While neither the Act nor BCRA have specified which population group is to be used, the Commission has historically used the more inclusive CPI–U since that would seem the best method to calculate changes in the affected limitation. The Commission invites comments on whether this or an alternative approach would be preferable.

Proposed paragraph 110.17(e) would state that the Commission would provide information concerning the amount of the adjusted contribution limitations through the **Federal Register** and the Commission's web site.

In order to alert the reader to these contribution limit increases, each section containing a contribution increase that is subject to the indexing also contains a new paragraph referring to these increases. These would be proposed paragraphs 110.1(b)(1)(i), (ii), and (iii); (c)(1)(i), (ii), and (iii); 110.2(e)(2); and 110.5(b)(2).

Prohibition on Contributions by Minors

Senator McCain, a primary sponsor of BCRA, stated during the Senate debate that the prohibition on contributions by minors is intended to prevent evasion of FECA's contribution limits and ''restores the integrity of the individual contribution limits by preventing parents from funneling contributions through their children, many of whom are simply too young to make such contributions knowingly.'' 148 Cong. Rec. S2145–2146 (daily ed. March 20, 2002).

During the debate, BCRA's sponsors acknowledged that many individuals younger than 18 years old enthusiastically supported candidates and pointed out that they could continue to do so by volunteering on campaigns and expressing their views through speaking and writing. *See* 148 Cong. Rec. S2146 (daily ed. March 20, 2002).

[3] The CPI published by the Department of Labor may be found over the Internet at *http://www.bls.gov/cpi/home.htm.*

1. 11 CFR 110.19 Contributions by Minors

BCRA prohibits minors (individuals 17 years old and younger) from making a contribution to a candidate or a contribution or donation to a political party committee. *See* 2 U.S.C. 441k. The Commission is proposing to place the regulations that address this prohibition in a new section 11 CFR 110.19.

Under current regulations, a child under 18 years of age may make contributions in accordance with the limits of the Act provided that the child voluntarily and willingly makes the decision to contribute, the funds, goods or services contributed are owned or controlled exclusively by the child, and the contribution is not made from the proceeds of a gift given to the child to make a contribution or is not in any way controlled by an individual other than the child. *See* current 11 CFR 110.1(i)(2). Consequently, the proposed rules would amend current 11 CFR 110.1(i)(2) to conform with BCRA. *See* below for discussion of the proposed conforming amendments.

Proposed paragraph (a) of new 11 CFR 110.19 would address contributions by minors to candidates. That paragraph would state that an individual who is 17 years old or younger must not make a contribution to a candidate for Federal office. Proposed paragraph (a) would further clarify that a contribution to a Federal candidate includes a contribution to a candidate's principal campaign committee, to any other authorized committee of that candidate, or to any entity directly or indirectly established, financed, maintained or controlled by one or more Federal candidates.

The Commission believes that prohibiting contributions by minors to entities directly or indirectly established, financed, maintained or controlled by a Federal candidate is within the scope of BCRA, but it seeks comment on this issue. The Commission also seeks comment on whether minors who are emancipated under State law should be exempt from the prohibition. A condition of emancipation under State law usually entails a showing that a minor manages his or her own financial affairs, which would lessen the likelihood that a parent would funnel contributions through the emancipated minor child. Finally, the Commission seeks comment on whether the regulations should make clear that the relevant time for determining whether a minor has made a prohibited contribution is the age of the minor at the time he or she makes a contribution, i.e., when the minor relinquishes control over the contribution. *See* 11 CFR 110.1(b)(6).

Proposed § 110.19(b) addresses contributions and donations made by minors to political party committees. Because BCRA specifically prohibits donations as well as contributions by minors to ''a committee of a political party,'' proposed paragraph (b) states that individuals 17 years old or younger may not make contributions or donations to a national, State, district or local committee of a political party. Thus, as proposed, the regulations would interpret BCRA as prohibiting minors from making any donations whatsoever to non-Federal accounts of State, district and local party committees. To the extent that a non-Federal account of a State or local party committee may contain Levin funds, i.e., funds raised under State law but limited under Federal law to $10,000 per contributor, to finance certain Federal election activity such as voter registration and get-out-the vote activities, prohibiting donations by minors to State, district and local party committees has a clear nexus to Federal elections. It should be noted that this interpretation may preempt certain State laws to the extent that States permit minors to donate to state and local political parties.

The Commission seeks comment, however, as to whether a narrower construction of the prohibition on donations by minors to state, district, and local political party committees may be warranted. For example, the prohibition on donations by minors in 2 U.S.C. 441k could be interpreted to apply only to donations used to conduct activities that have some effect on Federal elections. Consequently, under this interpretation, a minor may make a donation only if the recipient state, district, or local party committee can show through a reasonable accounting method or by establishing a separate account that the donation is used exclusively for purposes that have no effect upon any Federal election to the extent permitted by State law. It is important to note, however, that a number of State laws treat contributions by minors as contributions by their parent(s) or guardian(s). *See* for example, Kan. Stat. Ann. 25–4153(c) and Okla. Stat. t. 74, 257:10–1–2(a)(1) and (h)(2).

Proposed 11 CFR 110.19(c) addresses contributions to other political committees, such as separate segregated funds and non-connected committees. The proposed rule would prohibit an individual who is 17 years old or younger from making a contribution to any such political committee if the contribution is earmarked or otherwise directed to one or more Federal candidates or political committees or organizations covered in proposed paragraphs (a) and (b).

Proposed 11 CFR 110.19(d) would make clear that minors are not prohibited from volunteering their services to Federal candidates, political party committees or other political committees. The exclusion of volunteer services is based on the statement made by Senator McCain in the BCRA Senate debate, as noted above, that Congress intended that minors could continue to participate in campaigns by volunteering.

Proposed paragraph (e) would define an entity ''directly or indirectly established, financed, maintained, or controlled'' by a candidate for purposes of the prohibition on minors' contributions to candidates as one that meets the definition of ''directly or indirectly establish, finance, maintain or control'' at 11 CFR 300.2(c). For the definition, *see* Final Rules for ''Excessive and Prohibited Contributions: Non-Federal Funds or Soft Money,'' 67 FR 49063 (July 29, 2002).

2. Conforming Amendments to 11 CFR 110.1(i)

As discussed above, beginning on November 6, 2002, BCRA prohibits individuals who are 17 years old or younger from making contributions to Federal candidates and contributions or donations to political party committees. However, BCRA also provides that this prohibition will not apply with respect to runoff elections, recounts or election contests resulting from elections held prior to November 6, 2002. *See* 2 U.S.C. 431 note. Consequently, the current regulation concerning contributions by minors at 11 CFR 110.1(i)(2) would be amended by adding new paragraph (i)(3) to clarify that the provisions of 11 CFR 110.1(i)(2) would continue to apply to contributions made by minors to authorized committees and political party committees in connection with runoff elections, recounts or election contests resulting from elections held prior to November 6, 2002. It would also clarify that contributions made by minors to authorized committees and political party committees for all other elections held after November 6, 2002 would be governed by proposed 11 CFR 110.19.

Because 2 U.S.C. 441k specifically prohibits contributions by minors to candidates and political party committees rather than to political committees in general, the proposed rules contemplate that minors could

continue to make contributions to political committees other than authorized committees or political party committees in accordance with the requirements of 11 CFR 110.1(i)(2). Consequently, 11 CFR 110.1(i)(2) would be amended to reflect this interpretation. The Commission seeks comment on whether 2 U.S.C. 441k could be interpreted to also prohibit contributions by minors to these other political committees.

Reattribution and Redesignation

With BCRA's renewed focus on contribution limits, the Commission is considering updating and streamlining its rules for designating contributions for a particular election or attributing contributions to particular donors. Current 11 CFR 110.1 and 110.2 set forth the procedures for the redesignation or reattribution of excessive contributions. Section 110.1(b)(5) permits an excessive contribution to a candidate that is not designated in writing for a particular election to be designated for a different election, provided that a signed, written redesignation is obtained from the contributor within 60 days. *See* 11 CFR 110.1(b)(5)(i)(C) and 110.1(b)(5)(ii). Given the amount of resources the Commission and the regulated community have had to devote to authorized committees' failure to properly follow these procedures, the Commission seeks comment on several ways to address this problem. Although BCRA does not address the procedures for handling excessive contributions, the Commission seeks comment on the following possible changes to §§ sections 110.1, 110.2 and 102.9 as a matter of administrative convenience and to better effectuate donor intent.

One possible change to § 110.1(b)(5) would be to presume that when a contributor makes an undesignated, excessive contribution to a candidate's authorized committee before a primary election, the contributor intends to contribute the excessive amount to the general election, provided that the total amount contributed does not exceed the limitations on contributions for both elections. If this presumption were allowed, the authorized committee would be permitted to treat the excessive amount of the contribution as a contribution made with respect to the general election without needing to obtain written permission from the contributor, or even to notify the contributor that such action had been taken. This approach, which is included in the proposed rules as Alternative 1–A in § 110.1(b)(5)(ii)(B), would be designed to minimize the administrative burden on authorized committees when a contributor's intent could be reasonably inferred.

Alternatively, or in conjunction with the presumption approach, the committee could be required to inform the contributor as to how the contribution had been designated, and that the contributor may request a refund. This approach is included in the proposed rules as Alternative 1–B in § 110.1(b)(5)(ii)(B). As with the presumption approach, no confirmation from the contributor would be required. If the Commission were to adopt the notification approach, then 11 CFR 110.1(l) would need to be amended to specify the documentation required to be retained under such an approach.

The Commission seeks comment on how this notification approach compares to or fits with the presumption approach. Would the benefit of requiring notification of contributors outweigh the administrative burden to authorized committees of providing and retaining records of such notification? What methods of notification (*e.g.*, mail, electronic mail or oral communication accompanied by a contemporaneous signed record of the conversation) should be permitted if this notification approach is adopted? Should notification be required within thirty days of the treasurer's receipt of the contribution? If a contributor requests a refund, should the treasurer be required to make the refund within thirty days of receipt of the request?

The Commission specifically seeks comment on the merits of applying the presumption or notification approach described above to an undesignated, excessive contribution received before a primary election. In addition, the Commission seeks comment on whether it should allow the presumption or notification approach for other types of redesignations, or for reattributions. *See* 11 CFR 110.1(b)(5)(i), 110.1(k) and 110.2(b)(5)(i). For example, should the Commission permit backward-looking presumptions, so that excessive general election contributions received after a primary election may be designated by an authorized committee to pay off primary debt? Alternatively, should it be presumed that a contributor intended to contribute an excessive amount beyond a current election cycle? Are backward-looking presumptions or presumptions beyond a current election cycle consistent with what contributors can be reasonably expected to have intended? More generally, if the Commission adopts the presumption or notification approach for certain contributions in § 110.1, should the Commission make conforming changes to the requirements for contributions by multicandidate political committees in § 110.2? Are there circumstances where the presumption or notification approach would be appropriate for the reattribution of a contribution to a different donor, such as when a contribution made by written instrument is imprinted with the names of more than one account holder? Alternatives 2–A and 2–B in proposed 11 CFR 110.1(k)(3)(ii)(B) sets forth how the presumption and notification approaches could be applied under those circumstances. If the Commission adopts the presumption or notification approach for certain types of redesignations or reattributions, conforming amendments will be required in §§ 110.1 and 110.2.

Whether or not the Commission decides to allow the presumption or notification approach for certain types of redesignations or reattributions, there will remain circumstances where redesignation or reattribution might not be appropriate without some form of authorization from the contributor. *See, e.g.,* 11 CFR 110.1(b)(5)(i)(B). Under current §§ 110.1 and 110.2, authorization from the contributor can only be obtained through written authorization signed by the contributor. The Commission seeks comment on whether it should eliminate the signature requirement for all redesignations and reattributions under 11 CFR 110.1 and 110.2, and instead permit authorization from the contributor by email or through oral communications with the contributor when there is a contemporaneous signed record of the conversation, as is permitted under the Commission's best efforts regulations (*see* 11 CFR 104.7(b)(2)). Eliminating the signature requirement or permitting committees to obtain authorization orally or by e-mail for redesignations and reattributions would require amendments to §§ 110.1 and 110.2.

In addition to concerns about balancing administrative burdens with adequate protection of contributors' intent, the Commission has concerns about some committees' illegal use of contributions received for the general election during the primary election, despite the existing requirement that authorized committees distinguish contributions received for the primary election and contributions received for the general election. *See* 11 CFR 102.9(e). In order to reduce the illegal use of funds during the primary election through the use of contributions intended for the general election, the Commission seeks comment on whether

all committees should be required to segregate contributions for the primary election from contributions for the general election. This could be done by tightening the requirements currently set forth in 11 CFR 102.9(e) so that separate accounts for primary and general election contributions would be mandatory, not optional.

Recordkeeping also plays a crucial role in ensuring compliance with the Act's contribution limitations. The Commission seeks comment on whether the recordkeeping duties set forth in 11 CFR 102.9 should explicitly require political committees to retain certain records of all contributions over $50. Should political committees be required to keep copies of contribution checks, either as photocopies or as digital images? Should committees be required to keep records of contributions made by credit card or debit card, such as credit card slips, processing batch reports, or other records created by the committee or provided by the credit or debit card processor? Many committees keep such records now, so it is not anticipated that it would create a significant additional administrative burden if such a recordkeeping requirement were adopted. Finally, the Commission seeks comment on whether 11 CFR 102.9 should include an explicit requirement that political committees maintain copies of all written solicitations.

Prohibition on Contributions, Donations, Expenditures and Disbursements by Foreign Nationals (11 CFR 110.20)

As indicated by the title of section 303 of BCRA, ''Strengthening Foreign Money Ban,'' Congress amended 2 U.S.C. 441e to further delineate and expand the ban on campaign contributions and donations by foreign nationals. BCRA expressly applies the ban to contributions and donations solicited or made directly or indirectly to candidates for State and local as well as Federal office. 2 U.S.C. 441e(a)(1)(A) and (a)(2). Furthermore, the prohibition is expressly applied to contributions and donations to committees of political parties and is extended to disbursements for electioneering communications as well as to expenditures and independent expenditures. 2 U.S.C. 441e(a)(1)(B) and (C).

Consequently, the Commission proposes to amend 11 CFR part 110 to implement the revised statutory provision. The proposed rules would remove and reserve 11 CFR 110.4(a), the current regulation that addresses foreign nationals. In its place, new § 110.20 would be created to describe the prohibitions on contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals. This new section would also incorporate the provision in 2 U.S.C. 441e(a)(2) which prohibits persons from soliciting, accepting, or receiving contributions and donations from foreign nationals.

1. ''Indirectly'' versus ''Through Any Other Person''

BCRA bans foreign national contributions and donations made ''directly or indirectly.'' Former 2 U.S.C. 441e(a) banned foreign national contributions made directly ''or through any other person.'' It is unclear what Congress intended in changing the terminology. While both phrases would address contributions made through conduits, the term ''indirectly'' could have a broader scope because the general purpose of section 303 of BCRA is to strengthen the ban on contributions and donations by foreign nationals. Comments are solicited as to whether ''indirectly'' should be construed to have a broader meaning than ''through any other person'' and if so, whether the rules should explicitly reflect this interpretation by defining ''indirectly.'' Please note that the proposed rule does not define ''indirectly.''

Given the above-cited statutory provisions, proposed paragraph 110.20(a) would explicitly state that foreign nationals shall not, directly or indirectly, make contributions or donations in connection with any election for Federal, State, or local office. Because BCRA retains the provision on express or implied promise, proposed paragraph (a) would also include that language. Additionally, proposed paragraph (a) would define ''election'' in accordance with 11 CFR 100.2 and proposed 11 CFR 110.20(j). While current § 100.2 addresses Federal elections, proposed paragraph (j) would define ''election'' generically so that it would include State and local elections.

Comment is also sought on whether ''indirectly'' should cover a foreign controlled U.S. corporation, including a U.S. subsidiary of a foreign corporation, when such corporation seeks to make (1) non-federal donations of corporate treasury funds, or (2) federal contributions through a political action committee. Specifically, the Commission seeks comment on whether BCRA's new statutory language prohibits foreign controlled U.S. corporations, including a U.S. subsidiary of a foreign corporation, from making corporate donations, or from making federal contributions from their PACs, or both.

2. Impact of the Addition of ''Donation'' in the Foreign National Ban

In BCRA, Congress added the ''donation'' of funds by foreign nationals to its prior ban on ''contributions'' by foreign nationals. In 2000, the Commission included in its legislative recommendations to Congress a proposal that 2 U.S.C. 441e be amended to clarify that the statutory prohibition on foreign national contributions extends to State and local elections. The Commission noted that this could be accomplished by changing ''contribution'' to ''donation.''

In BCRA, Congress chose to retain ''contribution'' and to add ''donation'' as a prohibited activity, while also explicitly listing ''a Federal, State, or local election'' as the elections in connection with which such contributions and donations must not be made. By means of this two-fold approach, Congress left no doubt as to its intention to prohibit foreign national support of candidates and their committees for all Federal, State, and local elections.

According to the section-by-section analysis of BCRA by Senator Feingold, the revision to 2 U.S.C. 441e ''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, including any electioneering communications. This clarifies that the ban on contributions [by] foreign nationals applies to soft money donations.'' (Statement of Sen. Feingold, 148 Cong. Rec. S1991–1997 (daily ed. Mar. 18, 20020)).

While final rules entitled ''Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money'' define ''donation'' at 11 CFR 300.2(e) for purposes of 11 CFR part 300, the proposed rules do not define ''donation'' for purposes of this rulemaking. The Commission seeks comments on whether it should include a definition of ''donation'' and, if so, should the definition be limited to proposed 11 CFR 110.20 or 11 CFR part 110, or should it be included in 11 CFR part 100 and have general applicability to all of the Commission's regulations.

3. Effects on Committees of Political Parties

BCRA also expressly extends the prohibition on foreign national contributions and donations to those made to committees of political parties, with foreign nationals prohibited from making any donations to such

committees. 2 U.S.C. 441e(a)(1)(B). The particular committees covered would include the national party committees, the national congressional campaign committees, as well as all State, district, local, and subordinate committees. In light of the addition of ''donation'' to the statutory language, it appears that the prohibition on foreign national funds would extend to all political party organizations, whether or not they are political committees under the Act. In addition, because many party committee activities affect Federal, State, and local elections, this interpretation is supported by, and would reinforce, the prohibition in 2 U.S.C. 441e(a)(1)(A) on foreign national contributions and donations in connection with a Federal, State, or local election. Consequently, proposed 11 CFR 110.20(b) would adopt this interpretation. Comments are requested on whether the proposed rules should adopt a different interpretation.

4. Expenditures, Independent Expenditures, and Disbursements for Electioneering Communications

BCRA prohibits a foreign national from making ''an expenditure, independent expenditure, or disbursement for an electioneering communication.'' [4] 2 U.S.C. 441e(a)(1)(C). This provision, read alone, could be construed so that ''expenditure,'' ''independent expenditure,'' and ''disbursement'' modify ''for an electioneering communication,'' therefore narrowing the scope of ''expenditure'' and ''independent expenditure'' to include only ''electioneering communications.'' BCRA, however, expressly exempts from the definition of ''electioneering communication'' ''a communication which constitutes an expenditure or an independent expenditure under this Act. * * *'' 2 U.S.C. 434(f)(3)(B)(ii). Thus, statutory construction would require that the phrase ''for an electioneering communication'' at 2 U.S.C. 441e(a)(1)(C) is read as modified only by the term ''disbursement,'' with the prohibitions against an expenditure'' or an ''independent expenditure'' being general in scope, *i.e.*, not limited to electioneering communications.

Consequently, proposed 11 CFR 110.20(d) would prohibit expenditures, independent expenditures, and disbursements [5] by foreign nationals for activities in connection with Federal, State, or local elections. Proposed paragraph (e) would specifically prohibit disbursements for electioneering communications by foreign nationals.

5. Other Disbursements

BCRA expressly prohibits all expenditures and independent expenditures by foreign nationals, and also prohibits all disbursements by foreign nationals for electioneering communications. Section 431(9)(A)(1) of FECA defines ''expenditure'' as ''any purchase, payment, * * * or anything of value made for the purpose of influencing any election for Federal office,'' and 2 U.S.C. 431(17) defines ''independent expenditure'' as ''an expenditure by a person expressly advocating the election or defeat of a clearly defined candidate which is made without cooperation or consultation with any candidate * * * .'' Thus, the terms ''expenditure'' and ''independent expenditure'' apply only to activities related to Federal elections. In contrast, ''disbursement,'' a term used in both FECA and BCRA, but not defined in the statutes, is now defined in new 11 CFR 300.2(d) as ''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.'' This definition of ''disbursement'' covers all payments including ''expenditures,'' ''independent expenditures,'' and those made in connection with non-Federal elections.

However, BCRA does not contain an express prohibition against foreign national disbursements for activities other than electioneering communications. This omission leaves in question the status of disbursements by foreign nationals for activities in connection with State and local elections that are by definition not ''expenditures'' or ''independent expenditures'' because they are not made to influence Federal elections. How the Commission addressed a similar issue in the past, however, provides guidance on this question.

Former 2 U.S.C. 441e contained no express prohibition against expenditures by foreign nationals. In response to this statutory silence, the Commission in 1989 revised 11 CFR 110.4(a) to state that foreign nationals were prohibited from making expenditures as well as contributions. The Explanation and Justification for that amendment stated: ''The FECA generally prohibits expenditures when it prohibits contributions by a specific category [of] persons, thereby ensuring that the person cannot accomplish indirectly what they are prohibited from doing directly.'' 54 FR 8581 (Nov. 24, 1989). The Explanation and Justification continued: ''Nothing in Section 441e's legislative history suggests that Congress intended to deviate from the FECA's general pattern of treating contributions and expenditures in parallel fashion.'' *Id.*

As discussed above, BCRA adds ''donations'' to the activities prohibited to foreign nationals, this being one way in which the reach of the statute is extended to State and local elections to which the term ''contributions'' does not apply. As was the case earlier with the FECA, there is nothing in BCRA that would indicate an intent on the part of Congress to treat disbursements for State or local elections any differently than it now treats expenditures for Federal elections. Therefore, the Commission in the regulations proposes to treat ''donations'' and ''disbursements'' in the same parallel fashion as it has treated ''contributions'' and ''expenditures'' in the past.

Consequently, proposed 11 CFR 110.20(d) would also prohibit disbursements by foreign nationals whether or not they are made for electioneering communications. Comments are sought as to whether a definition of ''disbursement'' using language similar to that in 11 CFR 300.2(d) should be included in 11 CFR 110.20.

6. Building Funds

The FECA prohibits foreign nationals from making any contribution or donation to national party committees, including donations for the purchase or construction of an office building. See 2 U.S.C. 441e. In addition, new 11 CFR 300.35(a) explicitly provides that the prohibitions in BCRA against contributions and donations by foreign nationals do not permit party committees to spend funds contributed or donated by foreign nationals for the purchase or construction of State or local party committee office buildings. Final Rule and Explanation and Justification, 67 FR 49101, 49127 (July 29, 2002). The Explanation and Justification for 11 CFR 300.35 indicates that this prohibition on foreign national funding also extends to in-kind contributions or donations. Consistent with new 11 CFR 300.35(a), the Commission proposes to add paragraph

[4] BCRA defines ''electioneering communication'' as a ''broadcast, cable, or satellite communication'' that ''refers to a clearly identified candidate for Federal office,'' that is made within particular time frames, and that is targeted to the relevant electorate if it refers to a candidate other than those for the office of President or Vice-President. 2 U.S.C. 434(f)(3)(A)(i)(I). For a discussion of electioneering communications, *see* the Notice of Proposed Rulemaking entitled ''Electioneering Communication,'' 67 FR 51131 (August 7, 2002).

[5] *See* below for discussion on disbursements.

(f) to 11 CFR 110.20 to explicitly state that foreign nationals are prohibited from making contributions or donations to committees of a political party for the construction or purchase of any office building.

7. Soliciting, Accepting, or Receiving Contributions or Donations from Foreign Nationals; Assisting Foreign Nationals to Make Contributions or Donations

BCRA prohibits any person from soliciting, accepting, or receiving from a foreign national a contribution or donation made in connection with a Federal, State, or local election, or made to a party committee. 2 U.S.C. 441e(a)(2). However, both the former and the current foreign national prohibitions in 2 U.S.C. 441e are silent as to the degree of knowledge, if any, that such person should be shown to have had regarding the foreign national status of the contributor or donor before the person will be deemed to have violated the statute. In contrast, other parts of FECA and BCRA expressly provide that knowledge is an element of the violation.[6]

The Commission in recent years has addressed the issue of required knowledge in a number of complex enforcement matters arising under former 2 U.S.C. 441e(a). In these matters, the Commission has confronted the questions of whether the statute or the First Amendment requires a person to have had knowledge of the contributor or donor's foreign national status in order to have been in violation of the foreign-national prohibition, and, if so, what degree of knowledge was required. Should, for example, actual knowledge at the time of a solicitation or receipt have been a prerequisite for a violation, or should the person have been required to follow up on certain factors that would have raised the suspicions of an objective observer?

Whether the foreign national prohibition as amended by BCRA contains a knowledge requirement is an important issue that may affect the implementation of this prohibition. One alternative is to assume, given the silence in both FECA and BCRA on this question, that Congress intended this to be a strict liability statute. The fact that Congress has used ''knowingly'' in other provisions of FECA and BCRA but did not include this standard with regard to the solicitation, acceptance or receipt of foreign national contributions and donations could be construed as intent not to require knowledge in this regard. However, an exception to the plain meaning rule is that it is not applied when an injustice would result. Sutherland Statutory Construction 47:25. Based upon Commission enforcement experience with political committees, and, in particular, with the involvement of volunteers in the solicitation and receipt of contributions and donation, a knowledge requirement, and related standards for the levels of knowledge to be required, may produce a less harsh result than a strict liability standard. Proposed 11 CFR 110.20(g), discussed below, would include a knowledge requirement with three different degrees of knowledge. Comments are sought regarding the addition of a knowledge requirement and of standards to be applied in determining whether such knowledge existed in a particular situation.

Additionally, the foreign national prohibition raises issues concerning the liability of persons who knowingly assist foreign nationals in making contributions or donations. Recently the Commission has addressed situations in which the liability of someone who served as a conduit or intermediary for a foreign national contribution was in question because he or she had not technically solicited, accepted or received the contribution at issue. Section 441e of FECA does not explicitly address those who assist others to violate its prohibition on foreign national contributions and donations. However, the Commission has taken the position in enforcement matters that, because 2 U.S.C. 441e prohibits foreign nationals from making contributions directly or through another person, and because the statute also prohibits persons from soliciting, accepting or receiving such contributions or donations, even a U.S. citizen's use of money acquired from a foreign national is prohibited, if that money was acquired for the purpose of enabling the foreign national to make political contributions.

Accordingly, proposed 11 CFR 110.20(g)(1) would prohibit any person from knowingly soliciting, accepting or receiving a contribution or donation from a foreign national. Proposed 11 CFR 110.20(g)(2) would prohibit any person from knowingly acting as a conduit or intermediary for receipt of a contribution or donation from a foreign national. Proposed 11 CFR 110.20(g)(3) would prohibit any person from knowingly providing substantial assistance with regard to the making of a contribution or donation by a foreign national.

Proposed paragraph (g)(4) would set forth the standards to be applied in determining whether the knowledge required by proposed paragraphs (g)(1), (2), and (3) exists in particular situations. Proposed paragraph (g)(4)(i) through (iii) would provide three alternative ways, any one of which would establish that a person has knowingly solicited, accepted or received a contribution or donation from a foreign national, or that a person knowingly acted as a conduit or intermediary for a foreign national to make a contribution or donation.

The first knowledge standard at proposed paragraph (g)(4)(i) would be that of actual knowledge. The second standard at proposed paragraph (g)(4)(ii) would require awareness on the part of the person soliciting, accepting or receiving a contribution or donation of certain facts that would lead a reasonable person to conclude that there is a substantial probability that the contribution or donation has come from a foreign source. This second standard would be in effect a ''reason to know'' standard, and is different from a ''should have known'' standard. Restatement (Second) of Agency, sec. 9, cmts. d and e (1958). The third standard at proposed paragraph (g)(4)(iii) would address situations in which the person soliciting, accepting or receiving a contribution is or becomes aware of facts that should have led any reasonable person to inquire about the status of the contributor or donor; however, the solicitor or recipient failed to so inquire. This third alternative would be in effect a willful blindness standard covering situations in which a known fact may not equal a substantial probability of illegality but at least should prompt an inquiry. Proposed paragraph (g)(5) would set out several categories of facts that are intended to be illustrative of the types of information that should lead a recipient to question the origins of a contribution or donation under proposed paragraph (g)(4)(ii) or (iii).

Comments are requested as to whether the standards or levels of knowledge at proposed paragraph (g)(4) are appropriate and whether there are other potential facts that should be added to those at proposed paragraph (g)(5). Further, comments are requested as to whether the regulation should expressly require that recipient candidates and committees actively seek information about the nationality of contributors and donors whenever one of the factors listed is at issue.

Current Commission regulations provide that political committee treasurers shall examine all

[6] ''No candidate or political committee shall *knowingly* accept any contribution or make any expenditure in violation of the provisions of this section * * *.'' 2 U.S.C. 441a(f) (emphasis added).

contributions received for evidence of illegality. *See* 11 CFR 103.3(b). Contributions that ''present genuine questions'' as to whether they were made by corporations, labor organizations, foreign nationals, or other prohibited sources may, within 10 days of receipt, either be deposited or returned to the contributor. *Id.* If any such contribution is deposited, the treasurer has an affirmative duty to investigate the contribution and use best efforts to determine the legality of the contribution. 11 CFR 103.3(b)(1). If, despite such due diligence, the treasurer is unable to determine the legality of the contribution within 30 days, the treasurer is required to refund the contribution to the contributor. *Id.*

If a treasurer of a political committee later discovers that a contribution is illegal based on new information that was not available at the time the contribution was received and deposited, the treasurer must refund the contribution to the contributor within 30 days of the date in which the illegality is discovered. 11 CFR 103.3(b)(2). This provision applies ''to contributions from foreign nationals or Federal contractors when there is no evidence of illegality on the face of the contributions themselves.'' Explanation and Justification, 52 FR 760, 768–69 (Jan. 9, 1987).

In light of BCRA's new statutory provisions regarding the foreign-national ban, the Commission seeks comment on when political committees and their treasurers have an affirmative duty to investigate contributions and donations to confirm that they do not come from foreign sources. Specifically, the Commission seeks comment on whether such an affirmative duty is limited to circumstances when contributions and donations ''present genuine questions'' as to whether they are lawful, as outlined in 11 CFR 103.3. Are there additional circumstances when such an affirmative duty arises? Are the circumstances limited to when there is ''evidence of illegality on the face of the contributions themselves'' (Explanation and Justification, 52 FR at 768–69) or when the political committee otherwise has specific, credible information at the time of the contribution indicating that the contribution may be from a foreign source? *See* proposed 11 CFR 110.20(g)(5) (identifying specific factual circumstances). Should the Commission consider creating any safe harbors within which political committees are deemed to have satisfied whatever affirmative duty exists to investigate contributions or donations to confirm that they do not come from foreign sources? One possible safe harbor could be for political committees who acquire proof of U.S. citizenship (such as copies of U.S. passports) for donors who reside outside the United States or who list a foreign address or who make a contribution or donation through a foreign bank. If a political committee later discovers that a contribution or donation is illegal based on new information that was not available at the time the contribution or donation was received and deposited, is the political committee immunized from liability under section 303 of BCRA, provided that the political committee refunds the contribution or donation within 30 days of the date in which the illegality is discovered pursuant to 11 CFR 103.3(b)(2)? Comments are sought on all of these issues.

In addition, comments are sought as to whether the Commission should incorporate into proposed § 110.20(g) the definition of ''solicit'' in 11 CFR 300.2(m),[7] whether it should leave the term undefined, or whether it should give the term a more expansive or a narrower reading in this context.

Proposed 11 CFR 110.20(h) would retain the current prohibition at 11 CFR 110.4(a)(3) on participation by foreign nationals in the decision-making process of any person, including entities such as corporations, labor organizations or political committees, related to Federal and non-Federal election-related activities. Foreign nationals would thus continue to be prohibited from taking part in decisions about contributions to any candidates or committees and about expenditures made in support of, or in opposition to, such candidates or committees. Foreign nationals would also continue to be prohibited from involvement in the direct management of a political committee, including a separate segregated fund and a non-connected committee.

8. Definitions

Proposed new 11 CFR 110.20(i) would retain the definition of ''foreign national'' currently found at 11 CFR 110.4(a)(4). Proposed 11 CFR 110.20(i)(1) and (2) would include the current exemptions for certain foreign principals as provided in 22 U.S.C. 611(b) and for permanent resident aliens as defined in 8 U.S.C. 1101(a)(20). At proposed 11 CFR 110.20(i)(3), however, the definition of ''foreign national'' would be narrowed by the exclusion of U.S. nationals as they are in turn defined in 8 U.S.C. 1101(a)(22).[8]

Proposed new 11 CFR 110.20(j) would define ''election'' for purposes of this section. Although ''election'' is defined at 11 CFR 100.2, the definition at that section is stated expressly in terms of Federal elections. New 11 CFR 110.20(j) would extend the overall definition to include elections at all political levels.

9. Donations to Presidential Inaugural Committees

Section 308 of BCRA amends section 510 of Title 36, United States Code, to prohibit Presidential inaugural committees from accepting donations from foreign nationals as defined in 2 U.S.C. 441e(b). 36 U.S.C. 510(c). Although section 308 does not amend Title 2, United States Code, its prohibition on donations by foreign nationals to Presidential inaugural committees, including its reference to the definition of ''foreign national'' in the Act, fits naturally within 11 CFR 110.20. Therefore, proposed new 11 CFR 110.20(c) has been created for this purpose.

Section 308 does not include a prohibition against the making of donations to Presidential inaugural committees by foreign nationals. Comments are sought as to whether the regulations should include a prohibition in this regard.

Conforming Amendment to 11 CFR 110.9

Current 11 CFR 110.9, entitled ''Miscellaneous provisions,'' includes four paragraphs that address: (a) Violations of the contribution limitations; (b) fraudulent misrepresentations; (c) price index increase; and (d) voting age population. Because this rulemaking and other BCRA rulemaking projects[9] would amend and move the provisions on fraudulent misrepresentation, the price index increase, and voting age population, only paragraph (a) of § 110.9, addressing violations of the contribution limitations, would remain. Therefore, the proposed rules would amend § 110.9 so that it contains only the provisions of paragraph (a) and the title of § 110.9 would be amended to

[7] The definition is part of the recently adopted final rules entitled ''Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money,'' 67 FR 49063 (July 29, 2002).

[8] ''National of the United States'' is defined as ''(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.'' 8 U.S.C. 1101(a)(22).

[9] The BCRA rulemaking project entitled ''Other Provisions'' will address the fraudulent misrepresentation provisions and the BCRA rulemaking project entitled ''Coordination and Independent Expenditures'' will address the voting age population provisions.

''Violations of limitations'' to reflect that change.

The proposed rules would also add the word ''knowingly'' in two places pertaining to the acceptance of contributions in violation of the limitations and prohibitions set forth in 11 CFR part 110. This revision would better reflect the knowledge requirement in 2 U.S.C. 441a(f) and 441f.

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 of 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 because they are not small businesses, small organizations, or small governmental jurisdictions.

Minors and most of foreign nationals are individuals, and therefore, not small entities. Furthermore, the proposed rules, which are based on statutory language, clarify and describe in further detail the already existing ban on contributions by foreign nationals. Additionally, to the extent that there may be foreign nationals that may fall within the definition of ''small entities,'' their numbers are not substantial, particularly the number that would make a donation, expenditure, independent expenditure, or disbursement in connection with a Federal, State, or local election.

In addition, the small entities to which the rules would apply would not be unduly burdened by the proposed increased contribution levels, which would give such small entities more latitude in the amount they contribute. The increase in contribution limits for individuals and national party committees would not create a burden for them even if they were small entities.

List of Subjects in 11 CFR Part 110

Campaign funds, Political committees and parties.

For reasons set out in the preamble, it is proposed to amend subchapter A of chapter I of title 11 of the *Code of Federal Regulations* as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for part 110 would be revised to 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, and 441k.

2. Section 110.1 would be amended by revising paragraphs (a), (b)(1), (b)(5)(ii), (c)(1), (i), and (k)(3)(ii) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

(a) *Scope.* This section applies to all contributions made by any persons as defined in 11 CFR 110.10, except multicandidate political committees as defined in 11 CFR 110.5(e)(3) or entities and individuals prohibited from making contributions under 11 CFR 110.19 and 110.20 and 11 CFR parts 114 and 115.

(b) *Contributions to candidates;* designations; and redesignations. (1) No person shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election for Federal office that, in the aggregate, exceed $2,000.

(i) The limitation in the introductory text of paragraph (b)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17.

(ii) The increased limitation shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election. For example, an increase in the limitation made in January 2005 is effective from November 3, 2004 to November 7, 2006.

(iii) In every odd numbered year, the Commission will publish in the Federal Register the amount of the contribution limit in effect and place such information on the Commission's Web site.

* * * * *

(5) * * *

(ii) (A) A contribution shall be considered to be redesignated for another election if—

(*1*) The treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation; and

(*2*) Within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

Alternative 1–A

(B) Notwithstanding paragraph (b)(5)(ii)(A) of this section or any other provision of this section, the treasurer of the recipient authorized political committee may treat all or part of the amount of the contribution that exceeds the contribution limits in paragraph (b)(1) of this section as made with respect to the general election, provided that:

(*1*) The contribution was made before the primary election;

(*2*) The contribution was not designated for a particular election;

(*3*) The contribution would exceed the limitation on contributions set forth in paragraph (b)(1) of this section if it were treated as a contribution made for the primary election; and

(*4*) Such redesignation would not cause the contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section.

Alternative 1–B

(B) Notwithstanding paragraph (b)(5)(ii)(A) of this section or any other provision of this section, the treasurer of the recipient authorized political committee may treat all or part of the amount of the contribution that exceeds the contribution limits in paragraph (b)(1) of this section as made with respect to the general election, provided that:

(*1*) The contribution was made before the primary election;

(*2*) The contribution was not designated for a particular election;

(*3*) The contribution would exceed the limitation on contributions set forth in paragraph (b)(1) of this section if it were treated as a contribution made for the primary election;

(*4*) Such redesignation would not cause the contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section;

(*5*) The treasurer of the recipient authorized political committee notifies the contributor of how the contribution was redesignated and that the contributor may request a refund of the contribution; and

(*6*) Within thirty days from the date of the treasurer's receipt of the contribution, the treasurer shall provide notification required in paragraph (b)(5)(ii)(B)(*5*) of this section to the contributor in writing; by electronic mail; or through oral communication with the contributor, provided that the treasurer makes a contemporaneous, signed record of the conversation.

* * * * *

(c) *Contributions to political party committees.* (1) No person shall make contributions to the political committees established and maintained by a national political party in any calendar year that in the aggregate exceed $25,000.

(i) The limitation in paragraph (c)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17.

(ii) The increased limitation shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election. For example, an increase in the limitation made in January 2005 is effective from November 3, 2004 to November 7, 2006.

(iii) In every odd numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limit in effect and place such information on the Commission's web site.

* * * * *

(i) *Contributions by spouses and minors.* (1) The limitations on contributions of this section shall apply separately to contributions made by each spouse even if only one spouse has income.

(2) Minor children (children under 18 years of age) may make contributions to any political committee, other than an authorized committee or a political party committee, which in the aggregate do not exceed the limitations on contributions of this section, if—

(i) The decision to contribute is made knowingly and voluntarily by the minor child;

(ii) The funds, goods, or services contributed are owned or controlled exclusively by the minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained exclusively in the child's name; and

(iii) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual.

(3) Paragraph (i)(2) of this section will apply to contributions made by minor children to authorized committees and political party committees for runoff elections, recounts or election contests resulting from elections held prior to November 6, 2002. For all other elections held after November 6, 2002, contributions by minor children to authorized committees and political party committees are prohibited. *See* 11 CFR 110.19.

* * * * *

(k) * * *

(3) * * *

(ii) (A) A contribution shall be considered to be reattributed to another contributor if—

(*1*) The treasurer of the recipient authorized political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and

(*2*) Within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Alternative 2–A

(B) Notwithstanding paragraph (k)(3)(ii)(A) of this section or any other provision of this section, a contribution described in paragraph (k)(3)(i) of this section that was made by a written instrument that is imprinted with the names of more than one account holder may be apportioned equally between the account holders, unless a different instruction is provided by the account holder(s) on the instrument or in a separate writing, provided that such apportionment would not cause a contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section.

Alternative 2–B

(B)(*1*) Notwithstanding paragraph (k)(3)(ii)(A) of this section or any other provision of this section, a contribution described in paragraph (k)(3)(i) of this section that was made by a written instrument that is imprinted with the names of more than one account holder may be apportioned equally between the account holders, unless a different instruction is provided by the account holder(s) on the instrument or in a separate writing, provided that such apportionment would not cause a contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section.

(*2*) The treasurer of the recipient authorized political committee shall notify each account holder of how the contribution was apportioned and that the contributors may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution. Within thirty days from the date of the treasurer's receipt of the contribution, the treasurer shall provide such notification to each account holder in writing; by electronic mail; or through oral communication, provided that the treasurer makes a contemporaneous, signed record of the conversation(s).

* * * * *

3. Section 110.2 would be amended by revising the section heading and paragraph (e) to read as follows:

§ 110.2 Contributions by multi-candidate political committees (2 U.S.C. 441a(a)(2)).

* * * * *

(e) *Contributions by political party committees to Senatorial candidates.* (1) Notwithstanding any other provision of the Act, or of these regulations, the Republican and Democratic Senatorial campaign committees, or the national committee of a political party, may make contributions of not more than a combined total of $35,000 to a candidate for nomination or election to the Senate during the calendar year of the election for which he or she is a candidate. Any contribution made by such committee to a Senatorial candidate under this paragraph in a year other than the calendar year in which the election is held shall be considered to be made during the calendar year in which the election is held.

(2) The limitation in paragraph (e)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17. The increased limitation shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election. For example, an increase in the limitation made in January 2005 is effective from November 3, 2004 to November 7, 2006. In every odd numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limit in effect and place such information on the Commission's web site.

* * * * *

4. Section 110.4 would be amended by revising the section heading and by removing and reserving paragraph (a).

§ 110.4 Prohibited contributions (2 U.S.C. 441f, 441g, 432(c)(2)).

* * * * *

5. Section 110.5 would be amended by revising the section heading and paragraphs (a), (b), (d), and (e) to read as follows:

§ 110.5 Aggregate bi-annual contribution limitation for individuals (2 U.S.C. 441a(a)(3)).

(a) *Scope.* This section applies to all contributions made by any individual, except individuals prohibited from making contributions under 11 CFR 110.19 and 110.20 and 11 CFR part 115.

(b) *Bi-annual limitations.* (1) In the two-year period described in paragraphs (b)(2) and (3) of this section, no individual may make contributions aggregating more than $95,000, including:

(i) $37,500 in the case of contributions to candidates and the authorized committees of candidates; and

(ii) $57,500 in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees which are not political committees of national political parties;

(iii) However, contributions made under the increased limits under 11 CFR part 400 are not subject to the limitations of paragraph (b)(1)(i) and (ii) of this section.

(2) The limitation in paragraph (b)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17. The increased limitation shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election.

(3) The contribution limits in paragraph (b)(1) must be aggregated within the same time period as described in paragraph (b)(2). For example, an increase in the limitation made in January 2005 is effective from November 3, 2004 to November 7, 2006. Contributions must likewise be aggregated from November 3, 2004 to November 7, 2006.

(4) In every odd numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limit in effect and place such information on the Commission's web site.

* * * * *

(d) *Independent expenditures.* The bi-annual limitation on contributions in this section applies to contributions made to persons, including political committees, making independent expenditures under 11 CFR part 109.

(e) *Contributions to delegates and delegate committees.* The bi-annual limitation on contributions in this section applies to contributions to delegate and delegate committees under 11 CFR 110.14.

6. Section 110.9 would be revised to read as follows:

§ 110.9 Violation of limitations.

No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of part 110. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this part 110.

§§ 110.15 and 110.16 [Added and Reserved]

7. Sections 110.15 and 110.16 would be added and reserved.

8. Section 110.17 would be added to read as follows:

§ 110.17 Price index increase.

(a) *Price index increases for party committee expenditure limitations and Presidential candidate expenditure limitations.* The limitations on expenditures established by 11 CFR 110.7 and 110.8 shall be increased by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period.

(1) Each amount so increased shall be the amount in effect for that calendar year.

(2) For purposes of this paragraph (a) the term base period means calendar year 1974.

(b) *Price index increases for contributions by persons, by political parties to Senatorial candidates, and the bi-annual aggregate contribution limitation for individuals.* The limitations on contributions established by 11 CFR 110.1(b) and (c), 110.2(e), and 110.5, shall be increased only in odd-numbered years by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period.

(1) The increased limitations shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amounts are increased and ending on the date of the next general election. For example, increases in the limitations made in January 2005 are effective from November 3, 2004 to November 7, 2006.

(2) For purposes of this paragraph (b) the term base period means calendar year 2001.

(c) *Rounding of price index increases.* If any amount after adjustment under paragraph (a) or (b) of this section is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

(d) *Definition of price index.* For purposes of this section, the term price index means the average over a calendar year of the Consumer Price Index (all items-United States city average) published monthly by the Bureau of Labor Statistics.

(e) *Publication of price index increases.* In every odd numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limits in effect and place such information on the Commission's web site.

§§ 110.18 [Added and Reserved]

9. Section 110.18 would be added and reserved.

10. Section 110.19 would be added to read as follows:

§ 110.19 Contributions by minors.

(a) *Contributions to candidates.* An individual who is 17 years old or younger shall not make a contribution to a candidate for Federal office, including a contribution to any of the following:

(1) A principal campaign committee designated pursuant to 11 CFR 101.1(a);

(2) Any other political committee authorized by a candidate under 11 CFR 101.1(b) and 102.13 to receive contributions or make expenditures on behalf of such candidate; or

(3) Any entity directly or indirectly established, financed, maintained or controlled by one or more Federal candidates.

(b) *Contributions to political party committees.* An individual who is 17 years old or younger shall not make a contribution or donation to:

(1) A national, State, district or local committee of a political party, including a national congressional campaign committee; or

(2) Any entity directly or indirectly established, financed, maintained or controlled by a national, State, district or local committee of a political party.

(c) *Contributions to other political committees.* An individual who is 17 years old or younger shall not make a contribution to any other political committee if that contribution is earmarked or otherwise directed to one or more Federal candidates or political committees or organizations covered by paragraphs (a) and (b) of this section. *See* 11 CFR 110.6.

(d) *Volunteer services.* Nothing in this section shall prohibit an individual who is 17 years old or younger from providing volunteer services to any Federal candidate or political committee.

(e) *Definition of directly or indirectly established, financed, maintained or controlled.* Directly or indirectly established, financed, maintained or controlled has the same meaning as in 11 CFR 300.2(c).

11. Section 110.20 would be added to read as follows:

§ 110.20 Prohibition on contributions, donations, expenditures and disbursements by foreign nationals.

(a) A foreign national shall not, directly or indirectly, make a contribution or a donation of money or other thing of value, or expressly or impliedly promise to make a contribution or donation in connection with any local, State or Federal election as defined in 11 CFR 100.2 and paragraph (j) of this section.

(b) A foreign national shall not, directly or indirectly, make a contribution or donation to a committee of a political party. For purposes of this section, a committee of a political party includes a national party committee, a national congressional campaign committee, a State, district, or local party committee, or a subordinate committee of a State party committee, whether or not it is a political committee.

(c) A Presidential inaugural committee shall not knowingly accept any donation from a foreign national.

(d) A foreign national shall not, directly or indirectly, make any expenditure, independent expenditure, or disbursement in connection with any Federal, State, or local election as defined in 11 CFR 100.2 and paragraph (j) of this section.

(e) A foreign national shall not, directly or indirectly, make any disbursement for an electioneering communication as defined in 11 CFR 100.29.

(f) A Foreign national shall not, directly or indirectly, make a contribution or donation to a committee of a political party for the purchase or construction of an office building. See 11 CFR 300.10 and 300.35.

(g)(1) No person shall knowingly solicit, accept, or receive from a foreign national any contribution or donation prohibited by paragraphs (a) through (c) of this section.

(2) No person shall knowingly receive funds as a conduit or intermediary for a contribution or donation prohibited by paragraphs (a) through (c) of this section.

(3) No person shall knowingly provide substantial assistance with regard to the making of a contribution or donation prohibited by paragraphs (a) through (c) of this section.

(4) For purposes of paragraphs (c) and (g) of this section, knowingly means that a person must:

(i) Have actual knowledge that the source of the funds solicited, accepted or received is a foreign national, or

(ii) Have been aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited, accepted or received is a foreign national; or

(iii) Have been aware of facts that would have led a reasonable person to inquire whether the source of the funds solicited, accepted, or received is a foreign national, but the person failed to conduct a reasonable inquiry.

(5) For purposes of paragraphs (g)(4)(ii) and (iii) of this section, pertinent facts include, but are not limited to:

(i) The use by the contributor or donor of a foreign passport or passport number for identification purposes;

(ii) The provision by the contributor or donor of a foreign address;

(iii) The contribution or donation is made by means of a check or other written instrument drawn on a foreign bank or by a wire transfer from a foreign bank; or

(iv) The contributor or donor resides abroad.

(h) A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.

(i) For purposes of this section, *foreign national* means—

(1) A foreign principal, as defined in 22 U.S.C. 611(b); or

(2) An individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence as defined in 8 U.S.C. 1101(a)(20); however,

(3) *Foreign national* shall not include any individual who is a citizen of the United States, or who is a national of the United States as defined in 8 U.S.C. 1101(a)(22).

(j) For purposes of this section, *election* means the process by which individuals, whether opposed or unopposed, seek nomination for election, or election, to public office. This definition includes any general, primary, special and runoff election, and a caucus or convention of a political party.

Dated: August 16, 2002.

Karl J. Sandstrom,

Vice Chairman, Federal Election Commission.

[FR Doc. 02–21277 Filed 8–21–02; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 26015; Notice No. 89–25]

RIN 2120–AD34

Airplane Engine Cowling Retention

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing a previously published Notice of Proposed Rulemaking (NPRM) (54 FR 38610, September 19, 1989) that would provide improved engine cowling retention for transport category airplanes by adding specific design requirements for cowling retention systems. The proposed rule would have promoted design and construction of cowling retention systems to withstand vibration, inertial loads, over-pressure, normal air loads, and thermal conditions of an engine compartment fire after failure or improper fastening of latching devices. We are withdrawing the proposed rule because the proposal has been surpassed by technological advances. The issues will be addressed by future regulatory action based on recommendations from the Aviation Rulemaking Advisory Committee, and will be harmonized with similar regulations in Europe and Transport Canada.

FOR FURTHER INFORMATION CONTACT: Michael McRae, Propulsion and Mechanical Systems Branch, Federal Aviation Administration, telephone 425–227–2113, e-mail *mike.mcrae@faa.gov.*

SUPPLEMENTARY INFORMATION

Background

On September 19, 1989, the FAA published Notice of Proposed Rulemaking No. 89–25 (54 FR 38610) to propose an amendment to 14 CFR part 25, and invited public comment on the issue of engine cowling retention. Section 25.1193, Cowling and nacelle skin, addresses the design of engine cowlings, but does not address the single failure of a latch or hinge, or an improperly fastened latch. Several in-

flight incidents of engine cowling separation resulted in damage to airplanes and property on the ground, and highlighted the need to re-evaluate the design and maintenance requirements applicable to engine cowlings. Notice No. 89–25 proposes to specify standards for failsafe criteria in the design of engine cowling retention systems, which would enable the systems to withstand the loss of a single latch and easily detect unlocked or improperly closed latches. The comment period for Notice No. 89–25 closed March 19, 1990.

Discussion of Comments

Fifteen commenters responded to the NPRM. In general, most commenters are in favor of the proposed requirement for direct visual inspection of cowling retention systems, and are not in favor of the proposed cockpit visual warning system. A few commenters suggest additional enhancements to the proposal.

Four commenters favor direct visual inspection of the cowling but oppose the cockpit visual warning system. One of these commenters states that the direct visual inspection makes redundant the proposed addition of a cockpit visual warning system. Another opposes the cockpit visual warning system stating that the system would not be justified economically or functionally. Others state that the cockpit visual warning system would be impractical, introduce the potential for false signal indications, add complexity, and increase potential for failures detrimental to safety.

One commenter states that the real problem is inadequate preflight inspections. Another commenter notes concern about the clarity of terms, and the low probability of a double failure condition of an engine fire and an unlatched latch. An additional commenter considers the fundamental problem to be the lack of preload and resulting wear, plus any accidental damage done while opening or closing the latch. In response to commenters' interest in direct visual inspections, the FAA continues to require pilots to determine that an aircraft is in a condition safe for flight and encourage an on-going focus on appropriate preflight inspections to uphold safety standards.

Commenters also express concern about harmonization of any engine cowling requirements. The withdrawal of Notice No. 89–25 will allow the FAA to consider harmonization concerns and address the issues more completely in future regulatory actions in consideration of recommendations developed within ARAC.

ICAO and Harmonization

The International Civil Aviation Organization (ICAO) established the International Standards and Recommended Practices to promote international cooperation towards the highest possible degree of uniformity in regulations and standards. The FAA and the Joint Aviation Authorities (JAA) of Europe came together to standardize their respective codes of regulation and identified a number of significant regulatory differences. Both consider harmonization a high priority. The FAA tasked ARAC with the harmonization effort. In 1999, the FAA and JAA agreed on a Fast Track Harmonization Program to expedite the standardization process. ICAO Resolution A29–3, Global Rule Harmonization, urges States to take positive action to promote global harmonization of national rules for application of ICAO standards. The FAA actively supports ICAO initiatives and programs to achieve a safe and efficient aviation system worldwide.

Reason for Withdrawal

The FAA is involved in eliminating unnecessary differences and harmonizing where practical similar requirements with the JAA and Transport Canada. The FAA finds that including the issues of Notice No. 89–25 within harmonization efforts assigned to ARAC will contribute to a more complete analysis of the issues and will better serve the public interest. We will propose future changes to the Code of Federal Regulations to achieve harmonization through an NPRM with an opportunity for public comment. Therefore, the FAA withdraws Notice No. 89–25, (54 FR 38610) published September 19, 1989.

Issued in Washington, DC, on August 16, 2002.

Ronald T. Wojnar,

Deputy Director, Aircraft Certification Service (AIR–1).

[FR Doc. 02–21472 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 25263; Notice No. 87–3]

RIN 2120–AB46

Low Fuel Quantity Alerting System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing a previously published Notice of Proposed Rulemaking (NPRM) to amend airworthiness standards for transport category airplanes by requiring a means to alert the flight crew to potentially unsafe low fuel quantities. We are withdrawing the proposed rule because information has been surpassed by technological advances. The issues will be addressed by future regulatory action based on recommendations from the Aviation Rulemaking Advisory Committee (ARAC). The FAA has determined that future regulatory action, including the broader scope of a harmonized proposal, will better serve the public interest.

FOR FURTHER INFORMATION CONTACT: Michael McRae, Propulsion and Mechanical Systems Branch, Federal Aviation Administration, telephone 425–227–2113, e-mail *mike.mcrae@faa.gov.*

SUPPLEMENTARY INFORMATION

Background

On May 12, 1987, the FAA published Notice of Proposed Rulemaking No. 87–3 (52 FR 17890) to propose an amendment to part 25 of title 14, Code of Federal Regulations, and invited public comment on the subject of a low fuel quantity alerting system. Notice No. 87–3 proposes to amend airworthiness standards for transport category airplanes by requiring a means to alert the flight crew to potentially unsafe low fuel quantities. The alerting system would be required to be independent of the normal fuel quantity measurement system, and the alert would have to occur with no less fuel remaining than that required to operate for 30 minutes at normal cruising conditions. The comment period closed September 9, 1987.

Discussion of Comments

Ten comments were received in response to the NPRM. In general, most commenters were in favor of the NPRM for the low fuel quantity alerting system,

with a few commenters suggesting additional enhancements to the proposal.

Of the commenters that express support for the proposal, one urges a similar rule change to parts 23, 121, and 135 of title 14 of the Code of Federal Regulations. Of the commenters who feel additional technology is warranted, one recommends a review and application to existing aircraft, another recommends an annual calibration check of the system, and another offers some design considerations. Several commenters find the cost estimation to be underestimated in the NPRM.

Two commenters support the proposal and state that the phrase ''30 minutes at normal cruising conditions'' needs clarification. Another two commenters object to the same phrase, but oppose the proposal, because it only applies to one configuration and one altitude. Both of these commenters assert that the proposal should only apply to air carriers whose aircraft weigh over 75,000 pounds.

The FAA acknowledges these contributions to the rulemaking process, and affirms its commitment to aviation safety by continuing to clarify, update, and harmonize its regulations. We will address any remaining concerns in future regulatory actions as we pursue global harmonization of aviation regulations.

ICAO and Harmonization

The International Civil Aviation Organization (ICAO) established the International Standards and Recommended Practices to promote international cooperation towards the highest possible degree of uniformity in regulations and standards. Thirty-two States and authorities joined in the goal of standardization.

The FAA and the Joint Aviation Authorities (JAA) of Europe came together to standardize their respective codes of regulation and identified a number of significant regulatory differences. Both consider harmonization of the two codes a high priority. In 1999, the FAA and JAA agreed on a Fast Track Harmonization Program to expedite the standardization process. ICAO Resolution A29–3, Global Rule Harmonization, urges States to take positive action to promote global harmonization of national rules for application of ICAO standards. The FAA actively supports ICAO initiatives and programs to achieve a safe and efficient aviation system worldwide.

Reason for Withdrawal

The FAA is involved in eliminating unnecessary differences and harmonizing, where practical, similar requirements with Europe and Transport Canada. We find that including the issues of Notice No. 87–3 within harmonization efforts assigned to ARAC will contribute to a more complete and current analysis of the issues that will better serve the public interest. In addition, future regulatory action will allow the public to benefit from the inclusion of technological advances relevant to the issues. To achieve harmonization goals and address technological issues, we will propose future changes to the Code of Federal Regulations through an NPRM with opportunity for public comment. Therefore, the FAA withdraws Notice No. 87–3 (52 FR 17890), published May 12, 1987.

Issued in Washington, DC, on August 16, 2002.

Ronald T. Wojnar,

Deputy Director, Aircraft Certification Service (AIR–1).

[FR Doc. 02–21471 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–80–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 206L, L–1, L–3 and L–4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed superseding airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (BHTC) helicopters. That proposal would have required inspecting the tailboom skins for a crack, replacing a cracked tailboom with a modified tailboom before further flight, and implementing a recurring inspection of the modified tailboom. That proposal was prompted by several reports of cracks found during mandatory inspections. This supplemental notice of proposed rulemaking (SNPRM) renews and revises the proposal by providing a terminating action, incorporating a more recent revision to the alert service bulletin (ASB), and increasing the compliance time for performing the inspections. The actions specified by this proposal are intended to detect a crack in the tailboom and to prevent separation of the tailboom from the helicopter and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before September 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–80–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–80–AD.'' The postcard will be date stamped and returned to the commenter.

Discussion

A proposal to amend 14 CFR part 39 to add an AD for certain BHTC helicopters was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on April 19, 2000 (65 FR 20927). That NPRM proposed inspecting the tailboom skins for a crack; replacing any cracked tailboom with an airworthy modified tailboom; modifying the tailboom within the next 300 hours time-in-service (TIS); and inspecting the modified tailboom for a crack at intervals not to exceed 1200 hours TIS. That NPRM was prompted by several reports of cracked tailbooms found during mandatory inspections. That condition, if not corrected, could result in separation of the tailboom from the helicopter and subsequent loss of control of the helicopter.

Since issuing that NPRM, the FAA has received comments from two commenters, the manufacturer and an operator, requesting changes to the proposed actions. We have considered all these comments.

Both commenters state that the proposed compliance time for modifying the tailboom within 300 hours TIS should be increased to 600 hours TIS or no later than December 31, 2000, whichever occurs first, to coincide with the compliance times in the applicable ASB. The commenters state that changing the compliance time would give the manufacturer time to deliver the required secondary parts to modify the tailboom and eliminate considerable replanning by operators of their maintenance programs. Also, the commenters state that the repetitive inspections required before modifying the tailboom will ensure safety until the modification is done.

The FAA agrees with the comments, however, the December 31, 2000, date has passed. Further, since publication of the NPRM, the manufacturer has revised their ASB and changed the compliance time to March 31, 2002. That date has also passed. Because of these delays, we have reevaluated the need for modifying the tailboom within 300 hours time-in-service (TIS). We now believe that a compliance time of 600 hours TIS is sufficient to meet our safety objectives.

One commenter states that the compliance time should change because a redesigned tailboom, part number (P/N) 206–033–004–181, is now manufactured with the required skin doubler hot-bonded in place. The FAA agrees and will add a statement in the proposal that installing an airworthy, redesigned tailboom, P/N 206–033–004–181, is terminating action for the requirements of the AD.

Another commenter states that the AD should inform operators that modifying the tailboom in accordance with earlier versions of the referenced ASB is acceptable (the proposal referenced Revision D of BHTC ASB 206L–99–115). The FAA agrees because changes to the original ASB are minor and do not change or compromise the previous engineering approval. Therefore, the proposal will include a note stating that modifying the tailboom in accordance with earlier versions of the referenced ASB is acceptable.

Finally, a commenter advised us that the phone and fax numbers listed for obtaining service information is incorrect; we have corrected those numbers in this proposal.

Since these changes expand the scope of the originally proposed rule and the previous NPRM has been published for more than 2 years, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that this proposed AD would affect 1546 helicopters of U.S. registry. The FAA also estimates that this proposed AD would require 52 work hours to accomplish the proposed actions, an average labor rate of $60 per work hour, and $22,954 for parts. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $40,310,404, assuming all the tailbooms are replaced.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron Canada: Docket No. 99–SW–80–AD. Supersedes AD 99–13–12, Amendment 39–11207, Docket No. 99–SW–23–AD.

Applicability: Model 206L helicopters, serial numbers (S/N) 45004 through 45049, 45051 through 45153, and 46601 through 46617; Model 206L–1 helicopters, S/N 45154 through 45790; Model 206L–3 helicopters, S/N 51001 through 51612; and Model 206L–4 helicopters, S/N 52001 through 52163, 52165 through 52212, and 52214 through 52216, with tailboom, part number (P/N) 206–033–004–all dash numbers, except P/N 206–033–004–181, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect a crack in the tailboom skin and to prevent separation of the tailboom from the helicopter and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight and thereafter at intervals not to exceed 10 hours time-in-service (TIS) until accomplishing a one-time fluorescent-penetrant inspection (FPI) required by paragraph (c)(2) of this AD, visually inspect for a crack in the tailboom using a 10-power or higher magnifying glass in the shaded areas as depicted in Figure 1 of this AD:

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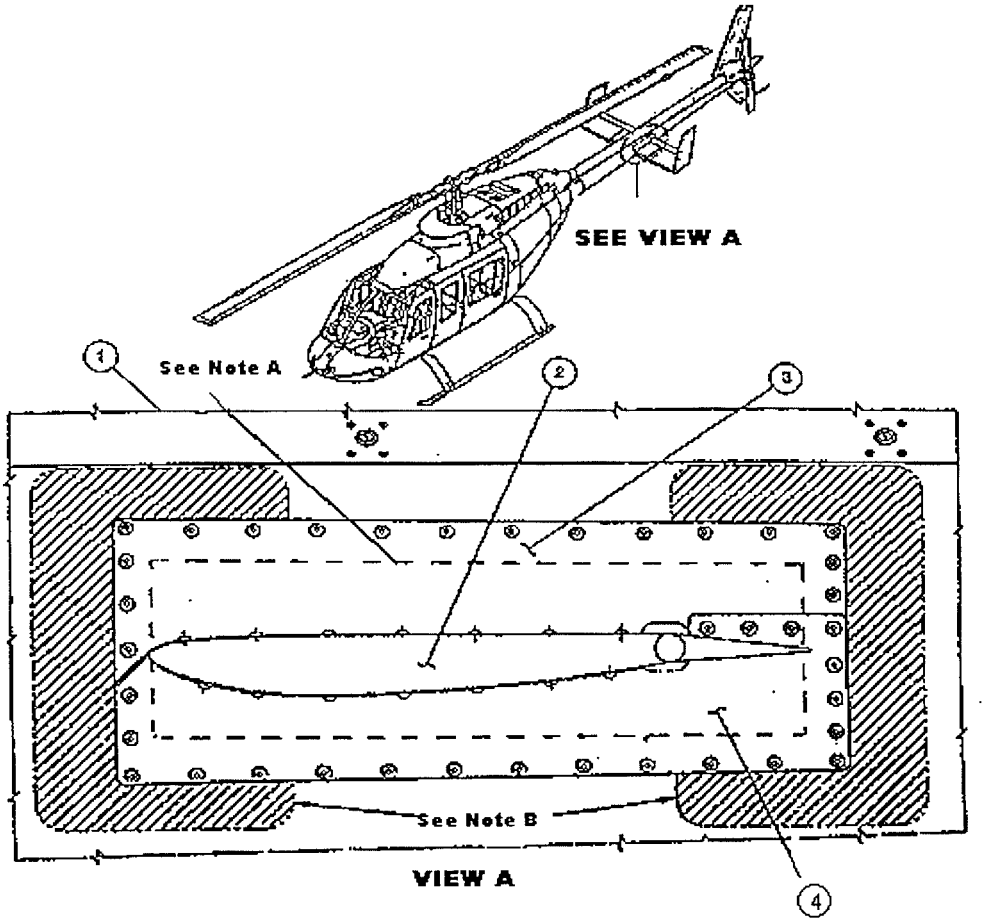

LEGEND

1. Tailboom assembly
2. Horizontal stabilizer
3. Upper support
4. Lower support

NOTES

A. Inspect entire edge of stabilizer opening on both sides of the tailboom.

B. Inspect for a crack in these two areas on both sides of the tailboom

Figure 1

BILLING CODE 4910–13–C

(b) At intervals not to exceed 5 hours TIS, visually check for a crack in the tailboom in the shaded areas as depicted in Figure 1 of this AD. The visual check may be performed by an owner/operator (pilot) holding at least a private pilot certificate and must be entered into the helicopter records showing compliance with this paragraph in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

(c) Within 50 hours TIS:

(1) Remove all four horizontal stabilizer supports, P/N 206–023–100-all dash numbers, from the tailboom and the horizontal stabilizer.

(2) Perform a one-time FPI of the edges of the tailboom skins for any crack around the left and right horizontal stabilizer openings as shown in Figure 1 of this AD. Remove paint and primer to inspect the edges and exterior skin surface in the skin area at least ¾ inch around the edges of the horizontal stabilizer openings as shown in Figure 1 of this AD.

(d) At intervals not to exceed 100 hours TIS after completing the FPI:

(1) Remove all four horizontal stabilizer supports, P/N 206–023–100-all dash numbers, from the tailboom and the horizontal stabilizer.

(2) Visually inspect the entire edge of the horizontal stabilizer opening on both sides of the tailboom for any crack using a 10-power or higher magnifying glass.

(e) Within 600 hours TIS, inspect and modify the tailboom in accordance with the Accomplishment Instructions, Parts I, II, and III of Bell Helicopter Textron Canada (BHTC) Alert Service Bulletin 206L–99–115, Revision F, dated April 14, 2001 (ASB).

(f) After modifying a tailboom in accordance with paragraph (e) of this AD or installing a tailboom modified in accordance with paragraph (e) of this AD, at intervals not to exceed 1200 hours TIS, inspect the modified tailboom in accordance with the Accomplishment Instructions, Part IV, of the ASB.

(g) If a crack is found during any check or inspection required by this AD, before further flight, replace the cracked tailboom with an airworthy tailboom modified according to the requirements of paragraph (e) of this AD or with an airworthy tailboom, P/N 206–033–004–181.

Note 2: Modifying the tailboom in accordance with revisions before Revision F of BHTC ASB 206L–99–115 is acceptable for the modifications required by paragraph (e) of this AD.

(h) Inspecting and modifying the tailboom in accordance with paragraph (e) of this AD is terminating action for the requirements of paragraphs (a) through (d) of this AD. Installing an airworthy tailboom, P/N 206–033–004–181, constitutes terminating action for the requirements of this AD.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

(j) Special flight permits may be issued for a one-time flight, not to exceed 5 hours TIS and a maximum of one landing in accordance with 14 CFR 21.197 and 21.199, to operate the helicopter to a location where the requirements of this AD can be accomplished. The visual preflight check required by paragraph (b) of this AD must be accomplished before making a one-time flight.

Note 4: The subject of this AD is addressed in Transport Canada (Canada) AD CF–98–42R3, dated February 17, 2000.

Issued in Fort Worth, Texas, on August 13, 2002.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–21357 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–21–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Limited BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Pilatus Britten-Norman Limited (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, BN–2T, BN2A MK. III series airplanes. This proposed AD would require you to repetitively inspect the bottom corner of the engine mount bracket for cracks and replace any cracked bracket with a new one. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this proposed AD are intended to detect and correct cracks in the engine mount bracket. Such a condition could cause the engine mount assembly to fail, which could result in the engine separating from the airplane and lead to loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 27, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–21–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–21–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from B–N Group Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may also view this information at the Rules Docket at the address above.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that

summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–21–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all Pilatus Britten-Norman BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III series airplanes. The CAA reports two occurrences of extensive cracks being found on the bottom corner of the engine mount bracket between the attachment flange and the main bracket. The cracks were found during regular scheduled maintenance.

The manufacturer has determined that this condition is a result of the reinforcing doubler being too close to the flange.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not detected and corrected, could result in failure of the engine mount. Such failure could result in the engine separating from the airplane and lead to loss of control of the airplane.

Is There Service Information That Applies to This Subject?

Pilatus Britten-Norman has issued Service Bulletin SB 275, Issue 1, dated November 30, 2001.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for inspecting the engine mount bracket for cracks and specifies replacing any cracked bracket.

What Action Did the CAA Take?

The CAA classified this service bulletin as mandatory and issued CAA AD Number 005–11–2001, not dated, in order to ensure the continued airworthiness of these airplanes in the United Kingdom.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the CAA has kept FAA informed of the situation described above.

Are There Differences Between This Proposed AD, the Service Information, and the CAA AD?

The CAA AD and the service information allows continued flight if cracks are found in the engine mount bracket that do not exceed certain limits. The applicable service bulletin specifies replacement of the engine mount bracket only if cracks are found exceeding this limit, as does CAA AD 005–11–2001. This proposed AD, if adopted, would not allow continued flight if any crack is found. FAA policy is to disallow airplane operation when known cracks exist in primary structure, unless the ability to sustain ultimate load with these cracks is proven. The engine mount bracket is considered primary structure, and the FAA has not received any analysis to prove that ultimate load can be sustained with cracks in this area.

Is There a Modification I Can Incorporate Instead of Repetitively Inspecting the Engine Mount Brackets?

The FAA has determined that long-term continued operational safety would be better assured by design changes that remove the source of the problem rather than by performing repetitive inspections. With this in mind, we will continue to work with Pilatus Britten-Norman in collecting information to determine whether a future design change may be necessary.

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

What Has FAA Decided?

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

—the unsafe condition referenced in this document exists or could develop on other Pilatus Britten-Norman BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III series airplanes of the same type design that are on the U.S. registry;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to repetitively inspect the bottom corner of the engine mount bracket for cracks, replace any cracked bracket, return the removed bracket(s) to Pilatus Britten-Norman, and report the return to FAA.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 126 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection for BN–2, BN–2A, and BN–2B, and BN2A MK. III series airplanes:

Labor cost	Parts cost	Total cost per airplane
4 workhours x $60 per hour = $240	$10	$250

We estimate the following costs to accomplish the proposed inspection for BN–2T series airplanes:

Labor cost	Parts cost	Total cost per airplane
8 workhours x $60 per hour = $480	$10	$490

We estimate the following costs to accomplish any necessary replacements for BN–2, BN–2A, BN–2B, and BN–2T series airplanes that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost per bracket	Total cost per bracket per engine
48 workhours x $60 per hour = $2,880 per engine (2 engines per airplane).	$1,295 (2 brackets per engine)	$2,880 + $1,295 = $4,175

We estimate the following costs to accomplish any necessary replacements for BN2A MK. III series airplanes that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost per bracket	Total cost per bracket per engine
48 workhours x $60 per hour = $2,880 per engine (2 engines per airplane)	$714	$2,880 + $714 = $3.594

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is ''within the next 500 hours time-in-service (TIS) or within the next 24 calendar months after the effective date of this AD, whichever occurs first.''

Why Is the Compliance Time of This Proposed AD Presented in Both Hours TIS and Calendar Time?

We have established the compliance time of this proposed AD in both hours TIS and calendar time. The unsafe condition is dependent upon repetitive airplane operation. However, the recommended maintenance program specifies other actions in this area at intervals not to exceed 2 years. Therefore, the compliance time will ensure that high-time airplanes are inspected within a certain amount of hours TIS and the lower time airplanes would be inspected at the next maintenance event in the affected area. We have determined that this compliance time:

—Will ensure that the unsafe condition is addressed in a timely manner on all affected airplanes; and

—Will not inadvertently ground any of the affected airplanes.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pilatus Britten-Norman Limited: Docket No. 2002–CE–21–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models, all serial numbers, that are certificated in any category:

Models

BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, BN–2T–4R, BN2A MK. III, BN2A MK. III–2, BN2A MK. III–3

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the engine mount bracket. Such a condition could cause the engine mount assembly to fail, which could result in the engine separating from the airplane and lead to loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Inspect the bottom corner of the engine mounting bracket between the attachment flange and the main part of the bracket for cracks. (i) If cracks are found during any inspection, replace the bracket with a new bracket and continue with the repetitive inspection requirements of this AD. (ii) If no cracks are found during any inspection, continue with the repetitive inspection requirements of this AD.	Initially insect within the next 500 hours time-in-service (TIS) or within the next 24 calendar months after the effective date of this AD, whichever occurs first, and repetitively inspect thereafter at intervals not-to-exceed 500 hours TIS or 1,000 landings, whichever occurs first. Replace cracked bracket prior to further flight after the inspection in which the crack is found.	In accordance with Pilatus Britten Norman Service Bulletin SB 275, Issue 1, dated November 30, 2001.
(2) Send the removed brackets to the Engineering and Design Authority, B–N Group Ltd. and report the return to FAA. The Office Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. the 3501 *et seq.*) and assigned OMB Control Number 2120–0056.	Within 10 days after removing the bracket or within 10 days after the effective date of this AD, whichever occurs later.	Send the removed brackets to B–N Group Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR, and report the return to Doug Rudolph, FAA, at the address in paragraph (f) of this AD.

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

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

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

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

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

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

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from B–N Group Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in the United Kingdom CAA AD Number 005–11–2001, not dated.

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

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–21356 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. PL02–6–000]

Notice of Inquiry Concerning Natural Gas Pipeline Negotiated Rate Policies and Practices; Extension of Comment Period

August 8, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry; extension of time.

SUMMARY: On July 17, 2002, the Commission issued a Notice of Inquiry Concerning Natural Gas Pipeline Negotiated Rate Policies and Practices (67 FR 48952, July 25, 2002). The dates for filing initial and reply comments are being extended at the request of the National Association of State Utility Consumer Advocates.

DATES: Initial comments should be filed on or before September 25, 2002. Reply comments should be filed on or before October 25, 2002.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael G. Henry, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 208–0532.

SUPPLEMENTARY INFORMATION: On July 26, 2002, the National Association of State Utility Consumer Advocates (NASUCA) filed a motion for an extension of time to file comments in response to the Commission's Notice of Inquiry (NOI) issued July 17, 2002, in the above-docketed proceeding. In its motion, the NASUCA states that because the issues presented in the NOI are of such significant importance to the natural gas industry and because of the press of other business, additional time is needed for the preparation of responsive comments. The motion further states that the Process Gas Consumers Group, the Interstate Natural Gas Association of America, the Natural Gas Supply Association and the American Gas Industry support the motion for additional time.

Upon consideration, notice is hereby given that an extension of time for filing comments on the NOI is granted to and including September 25, 2002. Reply comments shall be filed on or before October 25, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21272 Filed 8–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103823–99]

RIN 1545–AX12

Guidance on Cost Recovery Under the Income Forecast Method; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels the public hearing on proposed regulations relating to cost recovery under the income forecast method.

DATES: The public hearing originally scheduled for Wednesday, September 4, 2002 at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Guy R. Traynor of the Regulations Unit, Associate Chief Counsel (Income Tax & Accounting), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Friday, May 31, 2002, announced that a public hearing was scheduled for September 4, 2002 at 10 a.m., in the auditorium of the Internal Revenue New Carrollton Building, at 5000 Ellin Road, Lanham, MD 20706. The subject of the public hearing is proposed regulations under section 167 of the Internal Revenue Code. The deadline for submitting outlines and requests to speak at the hearing for these proposed regulations expired on August 13, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of August 19, 2002, no one has requested to speak. Therefore, the public hearing scheduled for September 4, 2002, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax & Accounting).

[FR Doc. 02–21464 Filed 8–21–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 7

[Notice No. 952; Re: Notice No. 946]

RIN 1512–AC10

Labeling and Advertising of Malt Beverages (2000R–107P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 946, a notice of proposed rulemaking published in the **Federal Register** on June 27, 2002, for an additional 30 days. The proposed rule revises the regulations regarding the labeling and advertising of malt beverages in accordance with plain language principles. These changes also incorporate minor technical amendments. There are no changes in the requirements of the existing regulations. We are making this change in order to more clearly communicate the regulations' existing requirements.

DATES: We must receive your comments on or before September 25, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division, Notice No. 946, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221.

See the Public Participation section below for information on alternative methods of commenting, and for information on how and where to review Notice No. 946 and the comments received in response to that notice.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Program Manager, Bureau of Alcohol, Tobacco and Firearms, 10 Causeway Street, Room 701, Boston, MA 02222; telephone 617–557–1323.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) published Notice No. 946 in the **Federal Register** on June 27, 2002, announcing the proposed plain language revision of 27 CFR Part 7, Labeling and Advertising of Malt Beverages. Please see Notice No. 946 at 67 FR 43496 for a discussion of the proposed revisions and for the proposed rule language.

As the proposed revision only adopts the plain language style, there is no change in the intent of the regulations from the existing part 7. There are no changes to the authority, scope, or effect of the regulations. The authority for the regulations in part 7 remains 27 U.S.C. 205.

We issued the original requirements in part 7 after an opportunity for notice and comment during the rulemaking process. Since we are proposing to make only stylistic changes and minor technical amendments, we are limiting comments on the proposed rule to the plain language issue.

Public Participation

We request comments from all interested persons. We will carefully consider all comments we receive on or before September 25, 2002. We will give the same consideration to comments we receive after that date if it is practical to do so, but we can give assurance of consideration only to comments we receive on or before September 25, 2002.

Comments Limited to Plain Language Issue

Because we only propose to amend these regulations to conform to the plain language style, we are limiting comments to the effects of this change in the regulations' language. Accordingly, comments should be limited to the following questions:

- Does this language have the same effect as the old regulations?
- Does the plain language format effect the operation of the regulations?
- Is this new style helpful or useful?

We will not consider in this rulemaking any comments that go beyond this scope.

Will ATF Treat My Comments as Confidential?

We will not recognize any material in comments as confidential, and your comments may be disclosed to the public. You should not include any material that you consider to be confidential or inappropriate for public disclosure. We may disclose the name of any person submitting a comment.

How May I Submit Comments?

By Mail: You may send written comments by U.S. mail to the address shown above in the **ADDRESSES** section of this notice.

By Fax: You may submit comments by facsimile transmission to (202) 927–8602. Facsimile comments must reference Notice No. 946 and must:

- Be legible when printed on 8½″ x 11″ paper;
- Contain a written signature; and
- Be five pages or less in length (to ensure access to our equipment).

We will not acknowledge receipt of FAX transmittals. We will treat facsimile comments as originals.

By E-Mail: You may submit comments of any length by electronic mail to nprm@atfhq.atf.treas.gov. Electronic mail comments must include:

- A reference to Notice No. 946;
- Your e-mail address; and
- Your name and post office address.

We will not acknowledge receipt of e-mail comments. We will treat e-mail comments as originals.

By On-line Form: You may also submit comments electronically using the comment form provided with the online copy of Notice No. 946 on the ATF Internet web site at *http://www.atf.treas.gov/alcohol/rules/index.htm.* We will treat comments submitted via the web site as originals.

How Does ATF Use the Comments?

We will summarize and discuss pertinent comments in the preamble to any subsequent notices or the final rule published as a result of the comments. We will not acknowledge receipt of comments or reply to individual comments.

Can I Review Comments Received?

You may view copies of the comments on Notice No. 946 by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–7890. You may request copies of the comments (at 20 cents per page) by writing to the ATF Reference Librarian at the address shown above.

For the convenience of the public, ATF will post comments received in response to Notice No. 946 on the ATF web site. All comments posted on our web site will show the name of the commenter, but will have street addresses, telephone numbers, and e-mail addresses removed. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the ATF library as noted above. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov/*, select ''Regulations,'' and then ''Notices of proposed rulemaking (Alcohol).'' Then click on the ''View Comments'' button for Notice No. 946.

Drafting Information

The principal author of Notice No. 946 is William H. Foster, and the author of this notice is Michael D. Hoover, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 7

Advertising, Authority delegations, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Authority and Issuance

This notice is issued under the authority contained in 27 U.S.C. 205.

Signed: August 16, 2002.

Thomas R. Crone,

Chief, Regulations Division.

[FR Doc. 02–21455 Filed 8–21–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–0054a]

RIN 1218–AB45

Occupational Exposure to Hexavalent Chromium (CrVI)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for information.

SUMMARY: OSHA requests data, comments, and information on issues relevant to occupational exposure to hexavalent chromium (CrVI), including: Significant epidemiological, animal, and in vitro studies; the relationship between occupational exposures to CrVI and the development of adverse health effects; industry profiles of use, current exposures, and population at risk; types and availability of control methodologies; analytical methods; medical screening and surveillance procedures; exposure assessment programs; employee training programs; and use of personal protective equipment.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or sent) by November 20, 2002.

Facsimile and electronic transmission: Your comments must be sent by November 20, 2002. (Please see the **SUPPLEMENTARY INFORMATION** provided below for additional information on submitting comments.)

ADDRESSES: *Regular mail, express delivery, hand-delivery, and messenger service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. H–0054a, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210; telephone (202) 693–2350. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket No. H–0054a, in your comments.

Electronic: You may submit comments but not attachments through the Internet at *http://ecomments.osha.gov.* (See the **SUPPLEMENTARY INFORMATION** provided below for additional information on submitting comments.)

FOR FURTHER INFORMATION CONTACT: General information and press inquiries—OSHA Office of Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (Telephone: (202) 693–1999); Technical information—Jeff Snyder, Directorate of Health Standards, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 (Telephone (202)—693-2292). For additional copies of this **Federal Register** notice, contact OSHA, Office of Publications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue, NW., Washington, DC, 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's web page on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this notice by (1) hard copy, or (2) FAX transmission (facsimile), or (3) electronically through the OSHA Webpage. Please note that you cannot attach materials, such as studies or journal articles, to electronic comments. If you have additional materials, you must submit three copies of the materials to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Contact the

OSHA Docket Office at (202)-693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the above address. Comment and submissions posted on OSHA's Web site are available at *http://www.osha.gov.* OSHA cautions you about submitting personal information such as social security numbers and birth dates. Contact the OSHA Docket Office at (202)–693–2350 for information about materials not available through the OSHA Webpage and for assistance in using the Webpage to locate docket submissions.

II. Background

Properties and Uses. Chromium exists in several oxidation states. Its most important natural source is as the mineral chromite ($FeOCr_2O_3$). Common forms of chromium compounds are trivalent chromium (CrIII), and hexavalent chromium (CrVI). CrVI can be produced when CrIII is heated in the presence of mineral bases and oxygen. Such a change (from CrIII to CrVI) also occurs as a by-product of welding or cutting operations on stainless steel. In addition, a portion of CrIII used in refractory bricks can convert to CrVI during normal furnace operations.

CrVI compounds are characterized by high melting points, very high boiling points, varying solubilities, a wide array of colors, corrosion resistance and resistance to acid. These properties make chromium ideal for use in such widely diversified products as corrosion-resistant materials, pigments, coatings, metal plating, and chemicals.

Health risks associated with occupational exposure to CrVI. Epidemiologic studies of workers exposed to CrVI have consistently shown a positive correlation between exposure to CrVI and excess lung cancer. See, *e.g.,* Machle and Gregorius (1948, Ex. 7–2); U.S. Public Health Service/Gafafer (1953, Ex. 7–3); Baetjer (1950, Ex. 7–6); Hayes *et al* (1979, Ex.7–15); Braver (1985, Ex. 7–17); Mancuso (1975, Ex. 18–3; 1997 Exs. 23, 24); and Gibb *et al* (2000, Ex. 25). The International Agency for Research on Cancer (IARC) (Ex. 18–1) and the U.S. Environmental Protection Agency (EPA) (Ex. 19–1) have classified CrVI as a human carcinogen based on excess lung cancers found in workers involved in chromate production, chromate pigment production, and chromium plating. The American Conference for Governmental Hygienists (ACGIH) classifies water-insoluble and water-soluble Cr IV compounds, zinc chromate, and strontium chromate as class A1 (confirmed human) carcinogens. (2002, ACGIH, TLVs® and BEIs®, Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices).

Occupational exposure to CrVI has also been associated with non-cancer health effects of the skin, such as dermatoses and chrome holes; and problems of the respiratory system including nasal septum irritation and perforation.

Occupational health regulation of CrVI exposure. In 1971, OSHA adopted and made applicable to general industry a national consensus standard (ANSI Z37.7–1971) for chromic acid and chromates (compounds that contain chromium in its hexavalent state). 29 U.S.C. 655(a). The general industry standard sets a permissible exposure limit (''PEL'') for hexavalent chromium compounds at 100 micrograms per cubic meter ($\mu g/m^3$) as a ceiling concentration measured as chromic acid (CrO_3), 29 CFR 1910.1000, Table Z–1 and Z–2. In 1971, OSHA also adopted, as its hexavalent chromium standard for construction work, an established federal standard that had been promulgated under the Construction Safety Act, 40 U.S.C. 333. That standard sets a PEL of 100 $\mu g/m^3$ (measured as CrO_3) as an 8-hour time-weighted average (8-hour TWA) for chromic acid and chromates, 29 CFR.1926.55.

In 1993, the Oil, Chemical and Atomic Workers Union (OCAW) and Public Citizen Health Research Group petitioned OSHA to issue an Emergency Temporary Standard (ETS) to immediately lower the PEL in all workplaces to 0.5 $\mu g/m^3$, measured as an 8-hour TWA. OSHA denied the petition because it failed to satisfy the stringent criteria for an ETS. However, OSHA opened a rulemaking docket and began to collect information that would be relevant to a CrVI rule.

The information available to date indicates that occupational exposures to CrVI presents a number of complex and difficult issues (e.g., data gaps on current usage of and exposure to CrVI, differences in opinion on the interpretation of health effects data). In this notice, OSHA is seeking information to help the agency resolve some of these issues. OSHA believes that affording interested members of the public the opportunity to be heard on these issues would benefit the agency's decisional process.

III. Request for Data, Comments, and Information

OSHA requests data, comments, and information on a variety of topics relevant to the agency's review of occupational exposure to CrVI. The topics include: Adverse health effects associated with occupational exposure to CrVI; methods, costs, and effectiveness of control strategies that can reduce exposure to CrVI; and medical management of exposed employees.

The questions below highlight the areas of concern to OSHA. When answering specific numbered questions below, please key your responses to the number of the question, explain the reasons supporting your views, and identify and provide relevant information on which you rely, including, but not limited to, data, studies and articles. The public is also welcome to comment on other issues raised by this notice.

A. Health Effects

As discussed above, OSHA is aware of a number of studies reporting an association between adverse health effects and exposure to CrVI. In this notice, OSHA is seeking information associated with, and analysis of, the most recent and important studies that the agency can use to evaluate health effects.

(1) What studies (including positive and negative studies) should OSHA consider useful in assessing the potential carcinogenic, mutagenic, and non-carcinogenic health risks of CrVI exposure? Explain your scientific rationale for recommending these studies including potential strengths and weaknesses such as size of the population (or sample) studied, characterization of exposure, and confounding factors.

(2) Are there any recent studies that examine the dermal effects of CrVI exposure?

(3) Are there any studies showing adverse health effects resulting from routes of occupational CrVI exposure other than dermal contact and inhalation? What are those adverse health effects?

(4) Are there any important studies related to the dose response behavior of CrVI, including cellular, mechanistic, and dosimetric considerations? For instance, are any health effects of CrVI dependent on the time period over which exposure occurs rather than dependent on the total cumulative dose received or are there data that suggest CrVI exhibits a threshold effect?

(5) Do short-term peak exposures play a role in causing adverse CrVI health

effects? If so, what studies are available that examine these types of effects. How should short-term peak exposures be addressed when evaluating CrVI health effects data? In answering, please consider both animal and human studies.

(6) How should OSHA address animal and epidemiological studies that rely on different analytical methods than are currently available to assess exposure when evaluating the health effects data contained in those studies?

(7) Animal studies are designed to test individual CrVI compounds (e.g., lead chromate, strontium chromate, potassium chromate). Epidemiological studies are designed to evaluate CrVI exposures in individual workplaces or by types of industries (e.g., chromate production, welding, pigment manufacture). Can or should the results from these individually tested compounds or work settings/industries be grouped together to assess the overall toxicity of CrVI or should each compound or industry be analyzed separately? Do different CrVI compounds have specific properties (e.g, solubility) that should be taken into consideration when evaluating animal or human studies?

B. Risk Assessment

OSHA is aware of the following risk assessments on human studies of lung cancer among workers exposed to CrVI via inhalation: The 1984 risk assessment prepared by the U.S. EPA (Ex. 19–1); the 1986 risk assessment prepared by Gibb et al. (Ex. 7–102); and the 1995 risk assessment by K.S. Crump Division (Ex. 13–5). These risk assessments relied heavily on the epidemiologic studies conducted by Mancuso (1975, Ex. 18–3) and Hayes et al. (Ex. 1979, Ex. 7–15). Since these risk assessments, Gibb et al. (2000, Ex. 25) has updated the investigation of the cohort originally studied by Hayes et al. (Ex. 7–15). This study notes limitations in the Mancuso data. OSHA is seeking the best available data to use in assessments of occupational risks of CrVI-related adverse health effects to CrVI-exposed workers. OSHA is especially interested in studies of occupational exposure that quantify exposure data and control for important confounding variables, have good statistical power, and are well conducted.

(8) Do the EPA (Ex. 19–1), the Gibb et al (Ex. 7–102) and the K.S. Crump (Ex. 13–5) risk assessments adequately characterize the lung cancer risks of CrVI? Please provide your rationale including information on studies selected and risk assessment methodology.

(9) What approaches (i.e., methods, models, data used) should OSHA use for estimating risk of CrVI exposure?

(10) Are there biological endpoints, besides lung cancer, that could or should be used to estimate the occupational risk to CrVI-exposed workers?

(11) What mathematical models are appropriate to quantify the risk of cancer or other adverse health effects associated with exposure to CrVI? What are the strengths and weaknesses of those models?

(12) Animal studies can add value to a risk assessment in areas such as dose-response. What, if any, animal studies are appropriate for use in a CrVI risk assessment? Which animal species, tumor incidences, route(s) of administration, and dose level(s) would be most appropriate.

(13) When extrapolating from animal studies, what additional corrections, if any, should be made to account for the route of exposure used in the study (e.g., topical application, injection, inhalation)?

(14) What other factors should OSHA take into consideration when analyzing risks associated with exposure to CrVI at the current permissible exposure level and in determining safe levels of exposure to CrVI?

C. Methods of Analyzing Exposure Levels

In June 1998, OSHA revised and validated its analytical method ''ID–215'' to evaluate airborne occupational exposures of CrVI (Ex. 29). The method, ID–215, is very sensitive, with a qualitative detection limit of 0.001 ug/m^3 for a 960 liter air sample. The quantitative detection limit is 0.003 ug/m^3 for a 960 liter air sample.

Method ID–215 is an improvement over prior analytical methods for airborne CrVI. Prior methods may have been subject to greater interference from other heavy metals. In addition, reducing agents such as Fe(II) could convert CrVI to CrIII and thus reduce the amount of CrVI reported as measured.

(15) Are there methods other than ID–215 for measuring exposure levels in the range of 0.02 to 10 ug/m^3 that would be as accurate as, or more accurate than, OSHA's ID–215?

(16) Are there methods for conducting wipe samples?

(17) Are there methods for conducting field-tests?

(18) Are there methods to determine the presence or absence of CrVI in buildings for which no blueprints are in existence?

D. OSHA's Investigations into Occupational Exposures, Control Measures, and Technological and Economic Feasibility

In 1994, OSHA contractor Meridian Research, Inc. delivered to the agency a report, Selected Chapters of an Economic Impact Analysis for a Revised OSHA Standard for Chromium VI: Introduction, Industry Profiles, Exposure Profiles, Technological Feasibility (for 6 Industries) and Environmental Impacts. (Ex. 26). This report was based, in part, on earlier analyses conducted by Centaur (Ex. 27). The purpose of the Meridian report was to ''evaluate the impact a revision of the Occupational Safety and Health Administration (OSHA) standard for CrVI may have in the principal industries that would be affected by the new standard'' and to ''[identify] the potentially affected industries, [discuss] the structure of these industries, [determine] the size of the population at risk, [identify] current levels of exposure, and [describe] some of the economic impacts potentially associated with a reduction in CrVI exposures.''

Meridian identified many industries with potential CrVI exposure for which Meridian was unable to provide full information. For example, OSHA lacks information on number of employees exposed, number of sites, nature and level of exposures, controls and how CrVI is used in processes for industries such as woodworking, refractory brick production, portland cement uses and leather tanning. Moreover, in the years since the Meridian report, market forces, technological changes and environmental factors have, in varying degrees, altered the magnitude, frequency, and duration of employee exposures in the industries that have traditionally handled CrVI. Because of these trends, some industries have abandoned or dramatically reduced usage of CrVI.

For these reasons, OSHA has worked to obtain additional information on affected industries and workers by utilizing the following sources: (1) Inspection reports collected and summarized within OSHA's computerized Integrated Management Information System; (2) occupational health studies; and (3) data related to site visits conducted by the National Institute for Occupational Safety and Health (NIOSH) under an inter-agency agreement between NIOSH and OSHA. OSHA sought information on patterns of employee exposure, specific routes of exposure, type and cost of engineering controls in particular industries, and types and costs of personal protective

equipment. OSHA has worked closely with NIOSH on this update. NIOSH has completed its field surveillance program and has delivered reports on roughly one-half of the sites. It has also summarized exposure data for the remaining sites. (Ex. 28). OSHA requests that the public review the industrial and exposure data reported by Meridian and NIOSH and provide comment on the representativeness of these data. OSHA further requests that the public comment on technological and economic forces that, especially within the last five to ten years, have altered worker exposure to CrVI.

Employee Exposure and Monitoring

(19) Are the industrial profiles described by Meridian and NIOSH reasonably reflective of current conditions, or have workplace and process conditions and worker activities changed to such an extent that the profiles would need revision? Are there industries or processes with CrVI exposures that are not covered in these reports?

(20) Are the exposure profiles reported by Meridian and NIOSH reasonably representative of affected industry processes or have there been changes in the statistical distribution of worker exposures in those profiles? OSHA requests exposure data that will enable the Agency to expand its current profile of the exposed worker population. For cases where commenters are able to provide exposure data, OSHA requests that, if possible, exposure data be personal samples with clear descriptions of the length of the sample. If this is not possible, the exposure data should clearly indicate the form and length of the exposure. In addition, exposure data that provide information concerning the controls in place are more valuable than exposure data without such information

(21) What are the job categories in which employees are potentially exposed to CrVI in your company or industry? For each job category, provide a brief description of the operation.

(22) How many employees are exposed, or have the potential for exposure, to CrVI in each job category in your company or industry?

(23) What are the frequency, duration and levels of exposures to CrVI at each job category in your company or industry? Include the analytical method and type of samples used for determining exposure levels. For cases where commenters are able to provide exposure data, OSHA requests that, if possible, exposure data be personal samples with clear descriptions of the length of the sample. If this is not possible, the exposure data should clearly indicate the form and length of the exposure.

(24) What engineering controls and types of protective equipment are either in use or available for each job category?

(25) What sampling and analytical methods are currently available to measure CrVI in your workplace? Provide details on the accuracy and precision of the sampling method, the range and limits of detection, the method of validation of sampling and analysis, and chemical interference.

(26) Describe any programs you have implemented for initial monitoring of exposure to CrVI. Do you conduct initial sampling or do you rely on objective data to estimate CrVI exposures? Describe any other programs you have implemented for assessing an employee's initial exposure to CrVI.

(27) Describe any follow-up or subsequent exposure assessments that you conduct. How often do you conduct any such follow-up or subsequent exposure assessments?

Control Measures and Technological Feasibility

(28) Have there been technological changes within your industry that have influenced the magnitude, frequency, or duration of exposure to CrVI and the means by which employers attempt to control exposures? The Agency requests that commenters describe in detail any technological changes within industries that have altered methods of control. Provide direct links between control technologies and data on exposure levels associated with the application of controls.

(29) Have you installed engineering controls or adopted work practices with the purpose of reducing exposure to CrVI? If so, have these controls or work practices resulted in a reduction of CrVI exposure? Please give specific examples where the introduction of controls and work practices have reduced exposure to CrVI.

(30) Has there been a trend to eliminate CrVI from production processes, products and services? If so, OSHA requests that interested parties comment on the success of substitution efforts. In particular, OSHA requests that commenters estimate the percentage reduction in CrVI, and the extent to which CrVI is still necessary in their processes within product lines or production activities. OSHA also requests that commenters describe any technical, economic or other barriers or hindrances to substitution.

Economic Impact

(31) The Agency seeks comment on potential impacts of reducing occupational exposures to CrVI, in terms of costs of controls, reduction in illness, cost savings related to accident avoidance, effects on revenue and profit, changes in worker productivity, or any other impact measure that commenters wish to identify. In describing and estimating impacts, please provide explicit examples of costs that could be incurred (e.g., dollar estimates of controls) or benefits that could be achieved (e.g., dollar estimates of medical savings from reduced cases of chromium-related illness).

(32) OSHA requests that commenters provide information on changes in market conditions that could result from reducing employees' exposures to CrVI. Include in your response any changes in market structure or concentration, or effects on domestic or international shipments of chromium-related products or services, that would result from reducing occupational exposures to CrVI.

E. Personal Protective Equipment and Respirators

(33) Are respirators provided to employees in your company or industry to protect against excessive airborne exposure CrVI? Why are they necessary and how are these respirators selected? Identify the type, model number, and manufacturer of such respirators by task.

(34) What other types of protective equipment, such as gloves, aprons, or other clothing, are provided to employees? How is this protective equipment selected?

(35) Under what conditions (e.g., exposure level, type of operations, duration of exposure) are protective equipment and respirators used?

(36) Are there processes or areas where it is infeasible to use respirators or other protective equipment to protect against exposure to CrVI? Describe those situations and explain why it is difficult to use protective equipment. How are employees protected in those situations?

F. Employee Training

(37) What job categories are included in your training program for reducing risks associated with CrVI exposure? How do you determine which job categories receive training?

(38) Describe the training employees receive, including the length and frequency of the training course, the topics covered, and the availability of training aids such as audio-visual aids and written operating instructions. Also

describe any other factors that affect the cost of training and provide any estimate of the cost of training.

(39) How do you determine the effectiveness of the training? Are decreased absenteeism, decreased medical/insurance costs, decreased accident rates/severity, and increased productivity factors in your determination? Are there any other factors in your determination? How are language barriers to training addressed?

(40) Are there ways in which CrVI-related training could be improved?

G. Medical Programs

OSHA is interested in medical programs that employers use or could use in the identification of signs and symptoms of illnesses associated with occupational exposures to CrVI. OSHA is especially interested in those programs focusing on prevention or treatment of CrVI-related injuries or illnesses for employees who have occupational exposure to CrVI.

(41) What medical or clinical examinations have potential usefulness in identifying workers with adverse health effects resulting from occupational CrVI exposure? Include specific tests or procedures used in any such examination and other useful information, such as the types of laboratories used for biological tests, the frequency of examinations and follow-up tests, and the contents of the examinations?

(42) What CrVI-related illnesses or conditions have you observed? What programs do you have in place to detect and refer employees for medical management?

(43) Do you have any information to suggest that the use of an employee medical management program designed to prevent adverse CrVI-related health effects such as ''chrome holes'' (ulcerations of the skin caused by CrVI) or nasal septum perforations reduces the incidence or prevalence of other CrVI-related effects, such as lung or other cancers?

(44) Are there any studies that suggest that elevated biological indicators (such as CrVI in blood or urine) are associated with an elevated risk of lung cancer or other adverse health effects such as asthma? What are normal levels of chromium in blood or urine in non-occupational exposed populations? Are these indicators affected by diet?

(45) Is there any information that suggests that biological indicators other than CrVI in blood or urine could be appropriate for evaluating risk of adverse health effects associated with CrVI exposures among workers?

(46) Are there any studies that suggest that chromium with other valences, other than in the CrVI valence, can be taken up by the red blood cells?

(47) When you evaluate an employee's chromium-blood levels, do you use whole blood or packed red blood cells? What is the significance of using one over the other?

(48) How do you determine eligibility in your medical screening program?

(49) Provide any information relating reduction in adverse health outcomes to the implementation of medical surveillance programs.

(50) Are your healthcare costs less after medical screening is initiated?

(51) Do you ever remove employees because of illness or injury related to CrVI exposure? If so, describe the circumstances of the removal and potential return. For how long are these employees removed? Are workers ever permanently removed?

(52) Please describe any special medical screening and treatment you conduct for chrome holes, dermatoses, and nasal septal perforations.

H. Environmental Effects

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) regulations (49 CFR. Part 1500, 43 F.R. 55978, November 29, 1978), and the Department of Labor (DOL) NEPA Compliance Regulations (29 CFR. Part 11); (45 F.R. 51187 *et seq.*, August 1, 1980) require that OSHA give appropriate consideration to environmental issues and impacts of proposed actions significantly affecting the quality of the human environment. OSHA is currently collecting written information and data on possible environmental impacts that could occur outside of the workplace (e.g., exposure to the community through contaminated air/water, contaminated waste sites, etc.) if the agency were to issue guidance or revise the existing standard for occupational exposure to CrVI. Such information should include both negative and positive environmental effects that could be expected to result from guidance or a revised standard. Specifically, OSHA requests comments and information on the following:

(53) How might reducing occupational exposures to CrVI exposure affect the environment?

(54) What is the potential direct or indirect impact of reducing employee exposure to CrVI exposure on water and air pollution, energy usage, solid waste disposal, and land use?

(55) How would any available CrVI substitutes alter ambient air quality, water quality, solid waste disposal, and land use?

(56) Are there situations in which reducing CrVI exposures to employees would be inconsistent with meeting environmental regulations?

I. Impact on Small Business Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), OSHA is required to assess the impact of proposed and final rules on small entities. OSHA requests that members of the small business community, or other parties familiar with regulation of small business, address any special circumstances facing small firms in controlling occupational exposure to CrVI.

(57) How many and what kinds of small businesses or other small entities in your industry could be affected by reducing exposures to CrVI? Describe any such effects.

(58) Are there special issues that make control of CrVI exposures more difficult or more costly in small firms?

(59) Are there any reasons that the benefits of reducing occupational exposure to CrVI might be less in small firms than in larger firms? With regard to potential impacts on small firms, please describe specific concerns that should be addressed. Please describe alternatives that might serve to minimize these impacts while meeting the requirements of the OSH Act.

J. Duplication/Overlapping/Conflicting Rules

(60) Are there any federal regulations that might duplicate, overlap or conflict with guidance or a revised standard concerning CrVI? If so, identify which ones and explain how they would duplicate, overlap or conflict.

(61) Are there any federal programs in areas such as defense or energy that might be impacted by guidance or a revised standard concerning CrVI? If so, identify which ones and explain how they would be impacted.

Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary's Order 3–2000, and 29 CFR Part 1911.

Signed at Washington, DC this 16th day of August, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–21449 Filed 8–21–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AL26

Schedule for Rating Disabilities; Guidelines for Application of Evaluation Criteria for Certain Respiratory and Cardiovascular Conditions; Evaluation of Hypertension With Heart Disease

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities, in order to provide guidance in the evaluation of certain respiratory and cardiovascular conditions, and to explain that hypertension will be evaluated separately from hypertensive and other types of heart diseases. The intended effect of this amendment is to clarify the use of the current criteria for evaluating respiratory and cardiovascular conditions, particularly in cases where alternative criteria are provided, in order to ensure that veterans receive consistent evaluations and are not required to undergo unnecessary tests.

DATES: Comments must be received on or before October 21, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AL26.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION:

Evaluation of Certain Respiratory Conditions

Since revised evaluation criteria for respiratory conditions were established in 1996, the evaluation of most respiratory conditions has been based primarily on the results of specific pulmonary function tests (PFT's). Conditions evaluated on that basis include chronic bronchitis (diagnostic code 6600), pulmonary emphysema (diagnostic code 6603), chronic obstructive pulmonary disease (diagnostic code 6604), interstitial lung disease (diagnostic codes 6825–6833), and restrictive lung disease (diagnostic codes 6840–6845). In some cases, the rating schedule provides alternative evaluation criteria that may be used instead of PFT's. These include measures of the maximum exercise capacity; the presence of pulmonary hypertension (documented by echocardiogram or cardiac catheterization), cor pulmonale, or right ventricular hypertrophy; episode(s) of respiratory failure; and a requirement for outpatient oxygen therapy. Alternative criteria were established in order to provide more than one route to reach a particular level of evaluation and, at the same time, avoid requiring that veterans undergo additional invasive, risky, costly, or time-consuming tests when one or more objective and reliable tests or findings suitable for evaluation purposes are already of record.

Applying the PFT results can be difficult in some cases. We therefore propose to add provisions that would clarify the use of PFT's in evaluating respiratory conditions to 38 CFR 4.96 as paragraph (d), titled ''Special provisions for the application of evaluation criteria for diagnostic codes 6600, 6603, 6604, 6825–6833, and 6840–6845.'' We developed these provisions after consultation with the Pulmonary/Critical Care Advisory Committee of the Veterans Health Administration.

Chronic bronchitis (diagnostic code 6600) is an example of a respiratory condition that is evaluated primarily on the basis of PFT's but also has alternative evaluation criteria. The criteria for a 100-percent evaluation are FEV–1 (Forced Expiratory Volume in one second) less than 40 percent of predicted value, the ratio of FEV–1 to FVC (Forced Vital Capacity) less than 40 percent, DLCO (SB) (Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method) less than 40-percent predicted, maximum exercise capacity less than 15 ml/kg/min oxygen consumption (with cardiac or respiratory limitation), cor pulmonale (right heart failure), right ventricular hypertrophy, pulmonary hypertension (shown by echocardiogram or cardiac catheterization), episode(s) of acute respiratory failure, or a requirement for outpatient oxygen therapy. The criteria for a 60-percent evaluation are FEV–1 of 40- to 55-percent predicted, FEV–1/FVC of 40 to 55 percent, DLCO (SB) of 40- to 55-percent predicted, or maximum oxygen consumption of 15 to 20 ml/kg/min (with cardiorespiratory limit). The criteria for a 30-percent evaluation are FEV–1 of 56- to 70-percent predicted, FEV–1/FVC of 56 to 70 percent, or DLCO (SB) 56- to 65-percent predicted. The criteria for a 10-percent evaluation are FEV–1 of 71- to 80-percent predicted, FEV–1/FVC of 71 to 80 percent, or DLCO (SB) 66- to 80-percent predicted.

For the first provision, we propose to state when pulmonary function testing is not needed for disability evaluation purposes. The first instance would be when there is a maximum exercise capacity of record that is 20 ml/kg/min or less (which would result in a 60- or 100-percent evaluation). Although this test is not routinely done, and not all facilities have the necessary equipment to conduct the test, if available, it is a reliable and precise way to assess respiratory disability, so it may be used to evaluate when it is available and is reported at levels that would warrant a 60- or 100-percent evaluation. If not of record, however, evaluation will be based on alternative criteria. The second instance would be when pulmonary hypertension (documented by an echocardiogram or cardiac catheterization), cor pulmonale, or right ventricular hypertrophy has been diagnosed. Any of these would result in a 100-percent evaluation. The third instance would be when there is a history of one or more episodes of acute respiratory failure, and the fourth instance would be when there is a requirement for outpatient oxygen therapy, because either of these also establishes entitlement to a 100-percent evaluation.

Routine pulmonary function testing may or may not include a measurement of DLCO (SB) (Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method). The DLCO (SB) is not useful or valid in assessing every respiratory condition (for example, it is not valid in cases where the lung volume is decreased), so it is up to the examiner to assess whether it would provide useful information in a particular case. We therefore propose to add a second provision that would state that if the DLCO (SB) is not of record, evaluation will be based on alternative

criteria as long as the examiner states why the DLCO (SB) would not be useful or valid in a particular case.

The third provision directs that when the PFT's are not consistent with the clinical findings, evaluation will be based on the PFT's unless the examiner states why they are not a valid indication of respiratory functional impairment in a particular case. The rationale for this is that PFT's are reliable, objective tests, and the respiratory system evaluation criteria have been revised in part to remove subjective assessment criteria, such as self-reported symptoms, in order to ensure consistent ratings. The PFT-based criteria are similar to the method of assessing impairment due to respiratory disease used by the American Thoracic Society and the American Medical Association *Guides to the Evaluation of Permanent Impairment,* 5th ed. (2001).

The fourth provision states that post-bronchodilator studies are required when PFT's are done for disability evaluation purposes except when the results of pre-bronchodilator pulmonary function tests are normal or when an examiner determines that post-bronchodilator studies should not be done and states why (for example, because the patient is allergic to the bronchodilator). The American Lung Association/American Thoracic Society Component Committee on Disability Criteria recommends testing for pulmonary function after optimum therapy.

The fifth provision also applies to post-bronchodilator studies and states that when evaluating based on PFT's, the post-bronchodilator results (rather than pre-bronchodilator results) will be used in applying the evaluation criteria in the rating schedule unless the post-bronchodilator results were poorer than the pre-bronchodilator results. In those cases, the pre-bronchodilator values will be used. The American Lung Association/American Thoracic Society Component Committee on Disability Criteria recommends testing for pulmonary function after optimum therapy. The best possible pulmonary function (which is ordinarily post-bronchodilator functioning) is the basis of standards for pulmonary function testing. If the bronchodilator has a contrary effect, the best pulmonary function would be the pre-bronchodilator functioning.

The sixth provision addresses cases in which there is a disparity between the results of different PFT's (FEV–1, FVC, etc.), so that the level of evaluation would differ depending on which test result is used to evaluate. In such cases, the test result that the examiner states most accurately reflects the level of disability would be used to evaluate.

The seventh provision states that a decreased FEV–1/FVC ratio will be considered normal if the FEV–1 is greater than 100 percent. In that case, both the FVC and the FEV–1 would be high (better than normal), so a decreased ratio would not indicate pathology.

Evaluation of Certain Cardiovascular Conditions

In 38 CFR 4.104 (Schedule of ratings—cardiovascular system), diagnostic codes 7000 (valvular heart disease), 7001 (endocarditis), 7002 (pericarditis), 7003 (pericardial adhesions), 7004 (syphilitic heart disease), 7005 (arteriosclerotic heart disease), 7006 (myocardial infarction), 7007 (hypertensive heart disease), 7011 (ventricular arrhythmias (sustained)), 7015 (atrioventricular block), 7016 (heart valve replacement), 7017 (coronary bypass surgery), 7018 (implantable cardiac pacemakers), 7019 (cardiac transplantation), and 7020 (cardiomyopathy) have almost identical evaluation criteria. As in the case of respiratory conditions, there are alternative criteria for evaluation at some levels, and some criteria are based on the results of special tests. For example, the evaluation criteria for diagnostic code 7000, valvular heart disease, are, in part, as follows: for a 100-percent evaluation, chronic congestive heart failure, workload of 3 METs (metabolic equivalents) or less results in dyspnea, fatigue, angina, dizziness, or syncope, or left ventricular dysfunction with an ejection fraction of less than 30 percent; for a 60-percent evaluation, more than one episode of acute congestive heart failure in the past year, workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or left ventricular dysfunction with an ejection fraction of 30 to 50 percent; for a 30—percent evaluation, workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or evidence of cardiac hypertrophy or dilatation on electro-cardiogram, echocardiogram, or X-ray; and for a 10-percent evaluation, workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or continuous medication required.

There are many tests that can assess cardiac function, as the presence of alternative criteria at various levels indicates. Which ones are done in a clinical situation for a particular patient, however, depends on many criteria, such as the type of heart disease, the clinical status of the patient, the clinician's preference, the local availability of certain tests, etc. The alternative criteria we provide at a particular level of evaluation are meant to closely approximate one another in the degree of cardiac disability they represent. For example, a National Institutes of Health publication titled ''Heart Failure: Evaluation and Care of Patients With Left-Ventricular Systolic Dysfunction'' (*http://text.nlm.nih.gov/ahcpr/lvd/www/lvdctxt.html*) states that the majority of patients with heart failure have moderate-to-severe left-ventricular systolic dysfunction and ejection fractions of less than 35–40 percent. Therefore, if congestive heart failure is present, the condition can be evaluated on that basis, with no need for a ventricular ejection fraction study to be conducted for rating purposes. The rating schedule requires that a diagnosis of cardiac enlargement or hypertrophy be supported by either X-ray, EKG, or echocardiogram, but it does not require that all 3 tests be done in every case simply for rating purposes. Our intent in providing alternative criteria was to avoid the need for a veteran to undergo additional tests that might be invasive, risky, costly, or time-consuming, if one or more objective and reliable tests or findings suitable for evaluation purposes are already of record. Although it was not our intent to require that a veteran undergo every test listed in the criteria, some individuals have interpreted the regulation as requiring that every veteran undergoing evaluation for one of these heart conditions have X-rays, an echocardiogram, a ventricular ejection fraction test (which can be done either by means of echocardiography or radionuclide ventriculography (MUGA scan)), and METs measurement (by exercise stress testing), in order to be certain that a higher evaluation based on one of the alternative criteria is not warranted. This regulation is proposed in order to clarify the application of these criteria.

We propose to add a new § 4.100, to be titled ''Application of the evaluation criteria for diagnostic codes 7000–7007, 7011, and 7015–7020,'' to VA's Schedule for Rating Disabilities. This section would contain three provisions guiding the evaluation of specified cardiovascular conditions. The first provision would require the evaluator to ascertain in all cases whether or not cardiac hypertrophy or dilatation (documented by electrocardiogram, echocardiogram, or X-ray) is present and whether or not there is a need for

continuous medication. Either of these would establish entitlement to a minimum evaluation level, and it is therefore essential to know whether either is present.

A second provision would indicate that even if the requirement for a 10% (based on the need for continuous medication) or 30% (based on the presence of cardiac hypertrophy or dilatation) evaluation is met, METs testing is always required except in the following cases: (1) When there is a medical contraindication, (2) when the left ventricular ejection fraction has been measured and is 50% or less, (3) when chronic congestive heart failure is present or there has been more than one episode of congestive heart failure within the past year, or (4) when a 100% evaluation can be assigned on another basis (such as during the three-month period following myocardial infarction). The rationale for this provision is that cardiac disability may warrant a higher evaluation on some other basis, such as the METs level, than the minimum evaluations assigned for continuous medication, or cardiac enlargement or hypertrophy. For example, even if a veteran with disability due to arteriosclerotic heart disease with angina requires continuous medication warranting a 10-percent evaluation, the METs level might warrant a higher evaluation.

The left ventricular ejection fraction (LVEF) is an objective measure of left ventricular function, that is, of the heart's ability to pump blood throughout the body. Decreased left ventricular function is a good indicator of the level of severity, prognosis, response to treatment, etc., of many heart problems. It has no value for rating purposes, however, unless it is decreased, because serious cardiac disability may be present even though the left ventricular function is normal. Whether an LVEF study is needed must be determined in a clinical setting. For rating purposes, the LVEF test is not necessary if there is a clinical diagnosis of either chronic congestive heart failure or a history of more than one episode of congestive heart failure within the past year because congestive heart failure of this degree establishes eligibility for a total (100-percent) evaluation. The LVEF test is also not usually necessary if METs testing, another very good indicator of the overall cardiovascular functional capacity, is available. We therefore propose that a third provision state that if LVEF testing is not of record, evaluation will be based on alternative criteria unless the examiner states that the LVEF test is needed in a particular case because the available medical information does not sufficiently reflect the severity of the veteran's cardiovascular disability.

These provisions will clarify the method of evaluation of these heart conditions.

Evaluation of Hypertension and Hypertensive Heart Disease

Before the cardiovascular system was revised in 1997, the evaluation criteria for hypertensive heart disease (diagnostic code 7007 in § 4.104 of 38 CFR), a condition that means the heart is enlarged or hypertrophied due to hypertension, were based in part on blood pressure readings. Hypertension itself was also evaluated primarily on the basis of blood pressure readings. Separately evaluating hypertension and hypertensive heart disease at that time was therefore prohibited because it would have meant evaluating two different conditions based on the same findings (or evaluating the same disability under two diagnoses), a process prohibited by 38 CFR 4.14, Avoidance of pyramiding. Since 1997, hypertensive heart disease has been evaluated on the same basis as most other types of heart disease, namely, the results of exercise testing expressed in METs, the presence of congestive heart failure, the ventricular ejection fraction, etc. It is no longer evaluated on the basis of blood pressure readings. Therefore, hypertension and hypertensive heart disease may now be separately evaluated because each has separate and independent evaluation criteria that do not overlap. There is therefore no conflict with § 4.14. The rating schedule changes left some confused about whether or not separate evaluations for hypertension and hypertensive heart disease are now appropriate. To eliminate the confusion, we propose to add a new note (3) under diagnostic code 7101, hypertensive vascular disease, in § 4.104, stating that hypertension will be separately evaluated from hypertensive heart disease and other types of heart disease.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Approved: June 26, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4 (subpart B) is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

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

Authority: 38 U.S.C. 1155, unless otherwise noted.

2. Section 4.96 is amended by adding paragraph (d) preceding the authority citation at the end of the section to read as follows:

§ 4.96 Special provisions regarding evaluation of respiratory conditions.

* * * * *

(d) *Special provisions for the application of evaluation criteria for diagnostic codes 6600, 6603, 6604, 6825–6833, and 6840–6845.* (1) Pulmonary function tests (PFT's) are

required to evaluate these conditions except:

(i) When the results of a maximum exercise capacity test are of record and are 20 ml/kg/min or less. If a maximum exercise capacity test is not of record, evaluate based on alternative criteria.

(ii) When pulmonary hypertension (documented by an echocardiogram or cardiac catheterization), cor pulmonale, or right ventricular hypertrophy, has been diagnosed.

(iii) When there have been one or more episodes of acute respiratory failure.

(iv) When outpatient oxygen therapy is required.

(2) If the DLCO (SB) (Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method) test is not of record, evaluate based on alternative criteria as long as the examiner states why the test would not be useful or valid in a particular case.

(3) When the PFT's are not consistent with clinical findings, evaluate based on the PFT's unless the examiner states why they are not a valid indication of respiratory functional impairment in a particular case.

(4) Post-bronchodilator studies are required when PFT's are done for disability evaluation purposes except when the results of pre-bronchodilator pulmonary function tests are normal or when the examiner determines that post-bronchodilator studies should not be done and states why.

(5) When evaluating based on PFT's, use post-bronchodilator results in applying the evaluation criteria in the rating schedule unless the post-bronchodilator results were poorer than the pre-bronchodilator results. In those cases, use the pre-bronchodilator values for rating purposes.

(6) When there is a disparity between the results of different PFT's (FEV–1 (Forced Expiratory Volume in one second), FVC (Forced Vital Capacity), etc.), so that the level of evaluation would differ depending on which test result is used, use the test result that the examiner states most accurately reflects the level of disability.

(7) Consider a decreased FEV–1/FVC ratio to be normal if the FEV–1 is greater than 100 percent.

* * * * *

3. Section 4.100 is added to read as follows:

§ 4.100 Application of the evaluation criteria for diagnostic codes 7000–7007, 7011, and 7015–7020.

(a) Whether or not cardiac hypertrophy or dilatation (documented by electrocardiogram, echocardiogram, or X-ray) is present and whether or not there is a need for continuous medication must be ascertained in all cases.

(b) Even if the requirement for a 10% (based on the need for continuous medication) or 30% (based on the presence of cardiac hypertrophy or dilatation) evaluation is met, METs testing is required in all cases except:

(1) When there is a medical contraindication.

(2) When the left ventricular ejection fraction has been measured and is 50% or less.

(3) When chronic congestive heart failure is present or there has been more than one episode of congestive heart failure within the past year.

(4) When a 100% evaluation can be assigned on another basis.

(c) If left ventricular ejection fraction (LVEF) testing is not of record, evaluate based on the alternative criteria unless the examiner states that the LVEF test is needed in a particular case because the available medical information does not sufficiently reflect the severity of the veteran's cardiovascular disability.

4. Section 4.104, diagnostic code 7101 is amended by adding a Note 3 to read as follows:

§ 4.104 Schedule of ratings—cardiovascular system.

DISEASES OF THE HEART

	Rating
* * * * *	
7101 Hypertensive vascular disease (hypertension and isolated systolic hypertension):	
* * * * *	

Note (3): Evaluate hypertension separately from hypertensive heart disease and other types of heart disease.

* * * * *

[FR Doc. 02–21366 Filed 8–21–02; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Simplified Address Format for Letter-Size and Flat-Size Standard Mail and Periodicals

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would amend some of the standards and identification procedures for Standard Mail and Periodicals letter-size and flat-size mail using the simplified address format as provided in *Domestic Mail Manual* (DMM) A040.4.0. This proposal would improve the processing and distribution of such mail and would also clarify and expand the standards for identifying this mail that does not bear a specific delivery address.

DATES: Comments must be received on or before September 23, 2002.

ADDRESSES: Mail or deliver written comments to the manager, Mail Preparation and Standards, Postal Service Headquarters, 1735 N Lynn Street, Suite 3025, Arlington, Virginia 22209–6038. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at Postal Service Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC. Comments may also be submitted via fax to 703–292–4058, ATTN: O.B. Akinwole.

FOR FURTHER INFORMATION CONTACT: OB Akinwole at (703) 292–3643.

SUPPLEMENTARY INFORMATION: Some mailers elect to use the simplified form of address for their mass mailings. Simplified address is an alternate-addressing format that allows mailers to prepare mailpieces without using individual names and addresses within very specific requirements. Instead of using individual addresses, the mailpieces are simply addressed as ''Postal Customer'' (or a similar designation as permitted). Eligibility to use the simplified address format is determined by the type of route selected for distribution, and in some instances by the type of mailer, as follows:

- Rural Routes, Highway Contract Routes, and Post Office Boxes. Any mailer may use simplified address format for the distribution of mail to rural routes, highway contract routes, and Post Office boxes at offices without city carrier service. Distribution of such mail is made to each boxholder on a rural route or highway contract route, each family on a rural route or highway contract route (at any Post Office), or all Post Office boxholders at a Post Office without city carrier service.
- City Routes and Post Office Boxes. Only certain authorized governmental entities may use the simplified address format for the distribution of mail to city routes or to Post Office boxes at Post Offices with city carrier service. Authorized governmental entities include U.S. Congress and Federal Government agencies or state, county, or municipal governments, and the governments of the District of Columbia, the Commonwealth of Puerto Rico, and any U.S. territory or possession listed in *Domestic Mail Manual* (DMM) G010.

Distribution of such mail must be made to each stop or possible delivery on city carrier routes, or to each Post Office box at Post Offices with city carrier service.

Under this proposal, *Domestic Mail Manual* (DMM) A040 would be revised to clarify the preparation requirements for letters and flats that use the simplified address format. Additionally, all congressional mailings using the simplified address format would use PS Tag 11, Congressional Mail, ''Postmaster—Open and Distribute'' on all containers to ensure appropriate handling through downstream postal processes. This tag, which would help identify congressional mail as it moves through the mailstream, would be firmly attached to the mailing container.

These proposed clarifications are a result of recommendations and suggestions from mailers and Postal Service personnel. The proposal would ensure that customer expectations for accurate processing and timely delivery are met. This would be achieved by clarifying and reinforcing procedures that would increase the identification of containers used in preparation of this type of mail. The Postal Service and mailers who use this mail format believe that clarifying and reinforcing the preparation and container labeling requirements would enable more accurate processing of the mail. It would also help maintain the integrity of mail using the simplified address format and prevent potential service breakdowns that may occur when such mail is inadvertently separated from the container identifying its destination as a result of inadequate preparation and container labeling. These discrepancies can cause unnecessary delays during postal handling and may increase postal processing costs.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions to the DMM, incorporated by reference in the *Code of Federal Regulations* (See CFR part 111).

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend *Domestic Mail Manual* A040, E200, and M200 as follows:

Domestic Mail Manual (DMM)

A Addressing

A000 Basic Addressing

* * * * *

A040 Alternative Addressing Formats

1.0 SIMPLIFIED ADDRESS

* * * * *

1.2 Use—City Routes, P.O. Boxholders

[Revise 1.2 by deleting the last sentence in the first paragraph and replacing it with the following sentence:]

* * * The following also applies:

* * *

* * * * *

1.3 Mail Preparation

[Revise 1.3 as follows:]

All pieces must be prepared in carrier route or 5-digit carrier route or carrier routes containers; 3-digit carrier route or carrier routes containers are not allowed. All flat-size pieces must be prepared in carrier route or 5-digit carrier sacks. All pieces for the same carrier route must be tied in packages of 50, so far as practicable, and each package must bear a facing slip showing desired distribution (e.g., 5-digit ZIP Code and route number). If the pieces are tied in quantities other than 50 each, the actual number must be shown on the facing slip. Delivery statistics for routes may be obtained as described in A930. Pieces in such mailings must also meet the following standards:

a. All pieces must be in the same processing category.

b. Pieces must be marked according to M012.

c. Letter-size pieces must be prepared in trays, and flat-size pieces must be prepared in sacks under M220 or M620, as applicable.

d. If selective distribution is desired, enough pieces must be presented to cover the route or routes selected.

[Delete 1.4. Redesignate 1.5, 1.6, and 1.7 as 1.4, 1.5 and 1.6, respectively.]

* * * * *

4.0 CONGRESSIONAL FRANK

* * * * *

[Redesignate current 4.3 and 4.4 as 4.4 and 4.5, and add new 4.3 to read as follows:]

4.3 Mail Preparation

Mailers must prepare containers of mail using the simplified address format in the manner listed below:

a. Containers of congressional frank mailpieces using the simplified address format must be prepared under A040.

b. PS Tag 11, *Congressional Mail,* ''Postmaster—Open and Distribute'' must be securely affixed to each sack or tray of congressional mail to ensure adequate identification of the mail. On trays, the tag must be affixed to the end that bears the tray label.

[Redesignate current 4.3 and 4.4 as 4.4 and 4.5, and add new 4.3 to read as follows:]

* * * * *

E Eligibility

* * * * *

E200 Periodicals

E230 Carrier Route Rates

* * * * *

3.0 WALK-SEQUENCE DISCOUNTS

* * * * *

3.3 Addressing Standards

[Revise 3.3b as follows:]

b. Official matter, whether mailed under congressional frank or by certain government entities for delivery on a city route, may use the appropriate simplified address format described in A040.

* * * * *

M Mail Preparation and Sortation

* * * * *

M200 Periodicals (Nonautomation)

* * * * *

M220 Carrier Route Rates

1.0 BASIC INFORMATION

1.1 General Preparation Standards

[Add new item h to read as follows:]

* * * h. Pieces with a simplified address must meet the corresponding preparation standards in A040 and the eligibility standards in E215.

* * * * *

[Revise the heading of 3.0 to read as follows:]

3.0 PREPARATION (LETTER-SIZE PIECES)

[Designate 3.0 as 3.1 and add new 3.2 to read as follows:]

3.2 Tray Line 2 for Pieces With Simplified Address

For trays that contain letter-size pieces with a simplified address prepared under A040, use ''MAN'' on Line 2 in place of ''BC.''

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–21461 Filed 8–21–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 264–0355b; FRL–7258–4]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns the emission of volatile organic compounds (VOC) from steam drive crude oil production wells.

DATE: Any comments on this proposal must arrive by September 23, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rule revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revision and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of the local MBUAPCD Rule 427. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 16, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–21436 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7265–8]

National Emission Standards for Hazardous Air Pollutants: Chlorine and Hydrochloric Acid Emissions From Chlorine Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The EPA is announcing the extension of the public comment period on the proposed decision not to regulate national emission standards for hazardous air pollutants for chlorine production facilities. We originally requested comments on the proposed rule by September 3, 2002 (67 FR 44713, July 3, 2002). We are extending the deadline for written comments to October 3, 2002 because the docket for the proposed rule, which contains pertinent information related to the proposal, was not available for inspection prior to July 31, 2002.

DATES: Comments may be submitted by October 3, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2002–09, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket Number A–2002–09, Room Number B108, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section. Comments may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Comments submitted by e-mail must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect® version 5.1, 6.1, or 8 file format. All comments and data submitted in electronic form must be identified by the docket number A–2002–09. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Officer, C404–02, Attention: Mr. Iliam D. Rosario, U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. Information related to the proposed standards is available for inspection at the Air and Radiation Docket and Information Center, Docket No. A–2002–09. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW., Room Number B108, Washington, DC 20460, telephone (202) 260–7548. The docket is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Iliam D. Rosario, Metals Group, Emission Standards Division, C439–02, U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5308; facsimile number (919) 541–5450; electronic mail address *rosario.iliam@epa.gov.*

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations,

Recordkeeping and reporting requirements.

Dated: August 16, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–21437 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7265–7]

RIN 2060–AE85

National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The EPA is announcing the extension of the public comment period on the proposed national emission standards for hazardous air pollutants (NESHAP) for mercury cell chlor-alkali plants. We originally requested comments on the proposed rule by September 3, 2002 (67 FR 44672, July 3, 2002). We are extending the deadline for written comments to October 3, 2002 because the docket for the proposed rule, which contains pertinent information related to the proposal, was not available for inspection prior to July 31, 2002. In addition, we have received a request for a 30-day extension from the Chlorine Institute to provide more time to evaluate the provisions contained in the proposed rule and to provide detailed comments.

DATES: Comments may be submitted by October 3, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2000–32, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket Number A–2000–32, Room Number B108, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section. Comments may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Comments submitted by e-mail must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect® version 5.1, 6.1, or 8 file format. All comments and data submitted in electronic form must be identified by the docket number A–2000–32. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Officer, C404–02, Attention: Mr. Iliam D. Rosario, U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. Information related to the proposed standards is available for inspection at the Air and Radiation Docket and Information Center, Docket No. A–2000–32. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW, Room Number B108, Washington, DC 20460, telephone (202) 260–7548. The docket is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Iliam D. Rosario, Metals Group, Emission Standards Division, C439–02, U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5308; facsimile number (919) 541–5450; electronic mail address *rosario.iliam@epa.gov.*

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Recordkeeping and reporting requirements.

Dated: August 15, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–21438 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 67, No. 163

Thursday, August 22, 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

Submission for OMB Review; Comment Request

August 16, 2002.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: USDA Biological Shipment Record—Beneficial Organisms.

OMB Control Number: 0518–0013.

Summary of Collection: The Biological Control Documentation Program records the importation and release of foreign biological control agents. Provision of the data is entirely voluntary and is used to populate the USDA ''Release of Beneficial Organisms in the United States and Territories'' (ROBO) database.

Need and Use of the Information: The Agricultural Research Service will collect information on the biological/control and taxonomic research program by recording the introduction and release of non-indigenous biological control organisms in the pollinators in the United States. If information were not collected there would be no systematic method for the collection of such information.

Description of Respondents: Federal Government; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion; annually.

Total Burden Hours: 25.

Economic Research Service

Title: Food Security Supplement to the Current Population Survey.

OMB Control Number: 0536–0043.

Summary of Collection: The Food Security Supplement is sponsored by the Economic Research Service (ERS) as a research and evaluation activity authorized under Section 17 of the Food Stamp Act of 1977. ERS is collaborating with the Food and Nutrition Service (FNS) and the Bureau of Census to continue this program of research and development. The Food Stamp Program (FSP) is currently the primary source of nutrition assistance for low-income Americans enabling households to improve their diet by increasing their food purchasing power. As the nation's primary public program for ensuring food security and alleviating hunger, USDA needs to regularly monitor these conditions among its target population. This need requires that USDA continue basic data collection, analysis, and evaluation.

Need and Use of the Information: ERS will collect information from the Current Population Survey Food Security Supplement to routinely obtain data from a large, representative national sample in order to develop a measure that can be used to track the prevalence of food insecurity and hunger within the U.S. population, as a whole, and by important population subgroups, and to continue development and improvement of methods for measuring these conditions. The data collected will partially fulfill the requirements of the Congressionally mandated 10-Year Plan for the National Nutrition Monitoring and Related Research Program.

Description of Respondents: Individuals or households.

Number of Respondents: 57,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 7,126.

Farm Service Agency

Title: Offer Forms.

OMB Control Number: 0560–0177.

Summary of Collection: The Agricultural Trade Development and Assistance Act of 1954, as amended, (Title II, Pub. L. 480), Section 416(b) of the Agricultural Act of 1949, as amended (Section 416(b)), and the Food for Progress Act of 1985, as amended (for Food for Progress) authorizes CCC's Export Operations Division to procure, sell and transport agricultural commodities, and obtain discharge/delivery survey information. Contractors, vendors, and steamship companies submit competitive offers for agricultural commodities and services. The Farm Service Agency (FSA) will collect information using several forms.

Need and Use of the Information: The information collected will enable Kansas City Commodity Office (KCCO) to evaluate offers impartially, purchase or sell commodities, and obtain services to meet domestic and export program needs. Without the information KCCO could not meet program requirements.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 2,025.

Frequency of Responses: Recordkeeping; reporting: On occasion; quarterly; weekly; semi-annually; monthly; annually; other (Bi-weekly & bi-monthly)

Total Burden Hours: 6,758.

Rural Utilities Service

Title: Accounting Requirements for RUS Electric and Telecommunications Borrows.

OMB Control Number: 0572–0003.

Summary of Collection: Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture that makes loans (direct and guaranteed) to finance electric and telecommunications facilities in rural areas. Currently, there are approximately 685 active electric borrowers and 737 RUS telecommunications borrows. RUS does not own or operate rural electric facilities. Its function is to provide, through self-liquidating loans and technical assistance, adequate and dependable electric and telecommunications service to rural people under rates and conditions that permit productive use of these utility services. RUS borrowers, as all businesses, need accounting systems for their own internal use as well as external use. Such records are maintained as part of normal business practices. Without systems, no records would exist, for example, or what they own or what they owe. Such records systems provide borrowers with information that is required by the manager and board of directors to operate on a dialy basis, to complete their tax returns, and to support requests to state regulatory commissions for rate approvals.

Need and Use of the Information: RUS collects information to evaluate a borrower's financial performance, to determine whether current loans are at risk, and to determine the credit worthiness of future loans. If basic financial records were not maintained, the borrower, its investors, and RUS would be unable to evaluate a borrower's financial performance.

Description of Respondents: Not-for-profit institutions; business or other for-profit.

Number of Respondents: 1,422.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 38,394.

Animal and Plant Health Inspection Service

Title: Imported Fire Ant.

OMB Control Number: 0579–0102.

Summary of Collection: The Plant Protection and Quarantine Service (PPQ) of USDA's Animal and Plant Health Inspection Service (APHIS) has the responsibility of enforcing quarantines that are designed to prevent Imported Fire Ants from invading areas of the United States that are not yet infested. Information is collected through a variety of forms and certificates to ensure that nursery stock are free of infestation and to regulate movement of specific articles that might carry Imported Fire Ants from infested areas to non-infested areas.

Need and Use of the Information: APHIS requires a variety of forms and certifications to be provided by nursery owners to ensure that plant stock is visually inspected for Imported Fire Ants and to document what treatment was performed if Imported Fire Ants were detected. Additionally, nursery owners must provide information on the movement of regulated items from quarantined areas. APHIS officials used this information to ensure compliance with the Federal and State Imported Fire Ant regulations. Without the collection of this information, APHIS would be unable to prevent Imported Fire Ants from moving beyond the quarantine zone.

Description of Respondents: Business or other for-profit; Federal Government; State, Local or Tribal Government; Farms.

Number of Respondents: 4,024.

Frequency of Responses: Recordkeeping; Reporting: Other (twice monthly).

Total Burden Hours: 5,010.

Animal and Plant Health Inspection Service

Title: Foot-and-Mouth Disease; Prohibition on Importation of Farm Equipment.

OMB Control Number: 0579–0195.

Summary of Collection: 21 U.S.C. authorizes sections 111, 114, 114a, 115, 120, 121, 125, 126 134a, 134c, 134f, and 134g. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as foot-and-mouth disease (FMD) and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products. Because of the recent increase in the spread of FMD in different parts of the world, APHIS published an interim rule to prohibit the importation of all used farm equipment into the United States from regions in which FMD exists, unless the equipment has been cleaned free of all soil and other particulate material in the exporting region.

Need and Use of the Information: APHIS will collect information through the use of a certification statement in which the exporter states that the cleaning of the equipment has been done. This is necessary to help prevent the introduction of foot-and-mouth disease into the United States. If the information were not collected APHIS would be forced to discontinue the importation of any used farm equipment from FMD regions, a development that could have a damaging financial impact on exporters and importers of this equipment.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 1,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,000.

Animal and Plant Health Inspection Service

Title: Center for Animal Health Monitoring Catfish 2003.

OMB Control Number: 0579–NEW.

Summary of Collection: The Department of Agriculture is responsible for protecting the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of contagious, infectious, or communicable diseases of livestock (including farm-raised fish) and poultry and for eradicating such diseases from the United States when feasible. The Animal and Plant Health Inspection Service (APHIS) operates the National Animal Health Monitoring System (NAHMS), which collects on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock and poultry diseases. NAHMS will initiate a national study titled Catfish 2003. The Catfish 2003 study will take place on farms in Alabama, Arkansas, Louisiana, and Mississippi. 7 U.S.C. 391, the Animal Industry Act of 1884, which established the precursor of the Animal and Plant Health Inspection Service, Veterinary Services, the Bureau of Animal Industry, mandates collection and dissemination of animal and poultry health data and information.

Need and Use of the Information: APHIS will use the information collected to (1) address emerging issues, (2) determine the economic consequences of disease, (3) and develop trade strategies and support trade decisions. APHIS will also collect information on the aspects of the catfish growers operation ranging from stocking and feeding practices to pest management practices.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government; Farms.

Number of Respondents: 1,080.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 495.

Animal and Plant Health Inspection Service

Title: National Animal Health Monitoring System Dairy 2002.

OMB Control Number: 0579–NEW.

Summary of Collection: The Department of Agriculture is responsible for protecting the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of contagious, infectious, or communicable diseases of livestock and poultry and for eradicating such diseases from the United States when feasible. The Animal and Plant Health Inspection Service (APHIS) operates the National Animal Health Monitoring System (NAHMS), which collects on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock and poultry diseases. NAHMS will initiate a national study titled Dairy 2002. The data collected through the national study will be used to describe Johne's management strategies, evaluate management factors associated with key food safety pathogens, describe level of understanding and preparedness of U.S. dairy producers to respond to threats of foreign animal diseases, and describe biosecurity practices, baseline dairy health, and animal waste handling practices. 7 U.S.C. 391, the Animal Industry Act of 1884, which established the precursor of the Animal and Plant Health Inspection Service, Veterinary Services, the Bureau of Animal Industry, mandates collection and dissemination of animal and poultry health data and information. APHIS will use several forms to collect information.

Need and Use of the Information: APHIS will use the information collected to (1) predict or detect national and regional trends in disease emergence and movement, (2) address emerging issues, (3) determine the economic consequences of diseases, and (4) develop trade strategies and support trade decisions. Without this type of national data, the U.S. ability to detect trends in management, production and health status that increase/decrease farm economy, either directly or indirectly, would be reduced or nonexistent. The ability to respond to international trade issues involving the health status of the U.S. dairy herd would be severely reduced, jeopardizing the marketability of meat and byproducts.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government; Farms.

Number of Respondents: 8,405.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 6,680.

Food and Nutrition Service

Title: Evaluation of the NSLP Application and Verification Pilot Project.

OMB Control Number: 0584-NEW.

Summary of Collection: The National School Lunch Program (NSLP) provides federal financial assistance and commodities to schools serving lunches that meet required nutrition standards. Children living in families whose incomes are 130 percent or less of the federal poverty level qualify for free meals; those living in families whose income are between 131 and 185 percent of poverty qualify for reduced-price meals. A verification process instituted in the early 1980s required that each school verify the application of a small sample of families by requiring them to submit documentation of their income. During the late 1990s, USDA and members of Congress became concerned about an apparent increase in the rates of error in determining eligibility for free and reduced-price meals. The study found that the number of children approved for free meals exceeded by 20 percent. In response to concerns about apparent increases in the number of ineligible students approved for free and reduced-price meals, the Food and Nutrition Service (FNS) has undertaken a set of pilot demonstration designed to improve the process of approving students for free and reduced-price meals and verifying their eligibility.

Need and Use of the Information: FNS will collect information to improve the accuracy of the eligibility determination system; raise substantial barriers to income-eligible households; deter income-ineligible households from becoming approved for free/reduced price meals benefits. Not conducting this data collection would significantly impede USDA's ability to evaluate the impacts of the NSLP Application/ Verification Pilot Projects.

Description of Respondents: Individuals or household; State, Local, or Tribal Government.

Number of Respondents: 3,216.

Frequency of Responses: Reporting: On occasion; other (1 time).

Total Burden Hours: 2,308.

Food and Nutrition Service

Title: Case Study of NSLP Verification Outcomes in Large Metropolitan Areas.

OMB Control Number: 0584–NEW.

Summary of Collection: The National School Lunch Program (NSLP) provides federal financial assistance and commodities to schools serving lunches that meet required nutrition standards. Children living in families whose incomes are 130 percent or less of the federal poverty level qualify for free meals; those living in families whose incomes are between 131 and 185 percent of poverty qualify for reduced-price meals. A verification process instituted in the early 1980s required that each school verify the application of a small sample of families by requiring them to submit documentation of their income. During the late 1990s, USDA and members of Congress became concerned about an apparent increase in the number of children approved for free and reduced-price meals whose family income made them ineligible. The planned Case Study of Verification Outcomes in Large Metropolitan School Food Authorities will document the outcomes of verification in 21 large metropolitan school districts around the country. Also, through in-person interviews, it will independently assess the eligibility status of two groups of verified cases: (1) Those students continuing to attend district schools whose benefits are terminated for failure to respond to the verification request, and (2) those students whose benefits are unchanged as a result of the verification process.

Need and Use of the Information: FNS will collect information about whether the verification process terminates the benefits of students whose incomes would make them eligible and also evaluate the collection and processing of information by the School Food Authority. Not conducting this data collection would significantly impede the ability of USDA and Congress to evaluate potential changes to the NSLP that might be considered to improve program targeting and administration.

Description of Respondents: Individuals or household; State, Local or Tribal Government.

Number of Respondents: 1,113.

Frequency of Responses: Reporting: On occasion; other (1 time).

Total Burden Hours: 672.

Forest Service

Title: ''How Are We Doing''? Customer Service Comment Card.

OMB Control Number: 0596–0146.

Summary of Collection: Executive Order 12862 issued September 11, 1993, directed Federal agencies to change the way they do business, to reform their management practices, to provide service to the public that matches or exceeds the best service available in the private sector, and to establish and implement customer service standards

to carry out principles of the National Performance Review. In response to this Executive Order, the Forest Service (FS) set up their customer service comment card program to provide an easy way for the public and partners to communicate their level of satisfaction with FS services and facilities.

Need and Use of the Information: FS will collect information to monitor customer perceptions and provide a means to learn about and address customer complaints. FS will also collect information to help them to improve services and facilities.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 15,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,000.

Food Safety and Inspection Service

Title: Pathogen Reduction/Hazard Analysis and Critical Control Point (HACCP) System.

OMB Control Number: 0583–0103.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451). These statutes mandate that FSIS protect the public by ensuring the meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS has begun to build the principle of prevention into its inspection program and requires regulated establishments to prepare operating plans and continuously report performance against the plans.

Need and Use of the Information: Information will be collected from establishments as proof that standard operating plans have been developed. Additionally, information must be reported and pertinent records maintained on the occurrence and numbers of pathogenic microoganisms on meat and poultry products. FSIS will use this information during the inspection process to determine whether an establishment should change its operating procedures so that the public's health is protected.

Description of Respondents: Business or other for-profit.

Number of Respondents: 7,374.

Frequency of Responses: Recordkeeping; Reporting: On occasion; other (daily).

Total Burden Hours: 7,904,222.

Barbara A. Lacour,

Departmental Information Clearance Officer.

[FR Doc. 02–21375 Filed 8–21–02; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–023N]

FSIS Security Guidelines for Food Processors; Notice of Availability

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability; request for public comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of the Agency's current Security Guidelines for Food Processors. These guidelines were developed to assist Federal- and State-inspected plants that produce meat, poultry, and egg products in identifying ways to strengthen their security plans to protect against acts of bioterrorism. FSIS recognizes that Federal- and State-inspected plants may also be aware of, and be adopting, security guidelines from other government agencies, industry organizations, and private sector experts. However, plants that do not have access to specialized security planning advice should find these guidelines useful as they develop and improve their food security plans.

These guidelines were designed and developed to meet the particular needs of meat, poultry, and egg processing plants and to be easily understood and readily adaptable by plant officials. While these guidelines are voluntary, and plants may choose to adopt measures suggested by many different sources, it is vital that all plants take steps to assure the security of their operations. The guidelines are available in both English and Spanish.

DATES: Submit written comments on the security guidelines to the FSIS Docket Clerk no later than October 21, 2002.

ADDRESSES: Copies of the FSIS Security Guidelines are available from the FSIS Docket Clerk, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700. Copies also are available on the Internet at: *http:www.fsis.usda.gov/oppde/rdad/publications.htm.* Send all written comments on the proposed security guidelines to the above address. All comments received will be considered part of the public record and will be available for viewing in the Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Perfecto Santiago, Assistant Deputy Administrator, Program Development Staff, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; telephone (202) 205–0699 or fax (202) 401–1760.

SUPPLEMENTARY INFORMATION: For nearly a century, the U.S. Department of Agriculture (USDA) has been protecting the Nation's food supply. Over this long history, FSIS has worked to develop the infrastructure to confront new food biosecurity challenges. FSIS has thousands of food inspectors and veterinarians working in meat, poultry and egg product plants every day, and at ports of entry to this country to prevent, detect, and act in response to food safety emergencies.

In January 2002, President Bush signed into law the FY 2002 Defense Appropriations Act, which includes $328 million in emergency funding for the USDA to further protect the public by strengthening essential programs and services related to biosecurity issues. FSIS will receive $15 million for security upgrades and bioterrorism protection. Of that amount, $10 million is allocated to conduct a food safety bioterrorism protection program. This includes education and specialized training for food safety regulatory and inspection personnel; technical assistance for State, local and international food safety authorities; a food biosecurity awareness campaign targeted to the general public and regulated industries; and expanded FSIS laboratory capabilities to test meat and poultry products for bacterial and chemical agents. Physical security, cyber-security and telecommunications at government facilities also will be strengthened.

FSIS recognizes that American food producers have a vested interest in making biosecurity a priority. FSIS will continue to seek input from stakeholders in developing guidance on biosecurity matters. To ensure that the producers of meat, poultry, and egg products have access to information to protect themselves, FSIS developed the guidelines. These guidelines include measures food processing establishments may consider for the prevention and handling of intentional acts of contamination. The guidelines address the need for establishments to develop and maintain food security plans that cover both inside and outside security. The guidelines also include

security measures for slaughter and processing, storage, shipping and receiving, water and ice supply, mail handling, and personnel.

FSIS is providing these guidelines to its field employees, who will assist plants that seek further information or advice; however, inspectors will not mandate adoption of any of the guidelines. The Agency intends to continue working to enhance guidance to businesses engaged in the production and distribution of regulated food and to work with other agencies to provide additional guidance for transportation, storage, and handling. The guidelines were developed as a first step, but FSIS recognizes the need for food protection guidelines from the ranch or farm to the consumer's table. FSIS invites public comment to strengthen these steps as part of the Homeland Security effort for the food and agricultural sectors.

Additional Public Notification

Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice and informed about the mechanism for providing their comments, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available online through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv), go to the ''Constituent Update'' page on the FSIS web site at *http://www.fsis.usda.gov/oa/update.htm.* Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

Done in Washington, DC, on August 18, 2002.

William J. Hudnall,

Acting Administrator.

[FR Doc. 02–21376 Filed 8–21–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Medicine Bow-Routt National Forests and Thunder Basin National Grassland Jackson County, CO; Green Ridge Mountain Pine Beetle Analysis

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental effects of a site specific proposal to salvage, reduce the spread and minimize further mortality from the existing mountain pine beetle epidemic, within the Green Ridge Mountain Pine Beetle Analysis Area of the Parks Ranger District of the Medicine Bow-Routt National Forests within Jackson County, Colorado. A small portion of the preventive treatments is proposed within an inventoried roadless area.

DATES: The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review during December 2002. At that time, the EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register.** The comment period on the draft EIS will be for a period of not less than 45 days from the date the EPA publishes the NOA in the **Federal Register.** It is important that those interested in the management of this area to comment at that time.

The final EIS is expected to be available in March 2003. In the final EIS, the Forest Service will respond to any comments received during the public comment period that pertain to the environmental analysis. Those comments and the Forest Service responses will be disclosed and discussed in the final EIS and will be considered when the final decision about this proposal is made.

ADDRESSES: Send written comments to Terry DeLay, Brush Creek/Hayden Ranger District, PO Box 249, Saratoga, WY 82331. Electronic mail (e-mail) may be sent to *tdelay@fs.fed.us* and FAX may be sent to (307) 326–5250. Telephone: (307) 326–2518.

FOR FURTHER INFORMATION CONTACT: Mail correspondence to Terry DeLay, Brush Creek/Hayden Ranger District, PO Box 249, Saratoga, WY 82331, (telephone (307) 326–2518), or Chuck Oliver, District Ranger, Parks Ranger District, PO Box 158, Walden, CO 80480, (telephone (970) 723–2750). Electronic mail (e-mail) may be sent to *tdelay@fs.fed.us* and FAX may be sent to (307) 326–5250.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this project is to reduce the spread of mountain pine beetle, salvage dead trees, and reforest affected areas on National Forest lands within the Green Ridge Analysis Area, in order to help protect forested areas on adjacent private land, and to alleviate potential negative effects of the beetle epidemic to the various resources on this portion of the Forest.

Proposed Action

The proposed action is a mix of protection, prevention, suppression, and restoration treatment activities geared to address the purpose and need of reducing the spread of mountain pine beetle on National Forest lands within the analysis area, including commercial timber sale, prescribed burning and precommercial thinning.

Responsible Official

Rick Cables, Regional Forester, USDA Forest Service, Rocky Mountain Region, 740 Simms Street, Golden, Colorado 80401, is the official responsible for making the decision on this action. He will document his decision and rationale in a Record of Decision.

Nature of Decision To Be Made

The Responsible Official will consider the results of the analysis and its findings and then document the final decision in a Record of Decision (ROD). The decision will include a determination whether or not to implement the proposed action or another alternative.

Scoping Process

The National Environmental Policy Act (NEPA) requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action.

The Forest Service is soliciting comments during the scoping phase of the environmental analysis process from Federal, State and local agencies, Indian Tribes, and organizations and individuals who may be interested or

affected by the decision. The analysis process will include:

1. Identification of the issues to be addressed.
2. Identification of the issues to be analyzed in detail.
3. Elimination of non-significant issues, issues addressed by previous environmental analyses, and issues not within the scope of this decision.

Public Involvement

Public scoping describing the Green Ridge Mountain Pine Beetle Analysis Area was initiated on July 31, 2002. Comments from scoping efforts will be reviewed to identify potential issues for this analysis. While comments are welcome at any time, comments received within 30 days of the publication of this notice in the **Federal Register** will be most useful for the identification of issues and the analysis of alternatives. As previously mentioned, comments may be sent by electronic mail (e-mail) to *tdelay@fs.fed.us.* Written comments may be mailed to the Brush Creek/Hayden Ranger District, PO Box 249, Saratoga, WY 82331, Attention: Terry DeLay. Please reference the *Green Ridge Mountain Pine Beetle Analysis EIS* on the subject line. The name and mailing address of the commenter should be provided with their comments so that future documents pertaining to this environmental analysis and the decision can be provided to interested parties.

Preliminary Issues

The following potential issues and concerns were identified through internal scoping:

(1) Beetle treatments within an inventoried roadless area, (2) beetle spread from National Forest to adjacent private lands, (3) cumulative impacts of past and proposed treatments, and (4) the **Federal Register** listed the town of Rand, Colorado, as one of the communities nationwide that are at risk from wildfire(s).

Release of Names

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within ten (10) days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Action publishes the notices of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised during the draft environmental impact statement stage, but are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft document. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives displayed in the document. Reviewers should refer to the Council on Environmental Quality Regulations at 40 CFR 1503.3 for implementing the procedural provisions of the National Environmental Policy Act for addressing these points.

Dated: August 2, 2002.

Rick D. Cables,

Regional Forester.

[FR Doc. 02–21452 Filed 8–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sawtooth National Forest, Idaho; Upper and Lower East Fork Allotment Management Plan Analysis

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) for the Upper and Lower East Fork Allotments. The proposed action in the EIS is to authorize grazing through revised allotment management plans (AMPs) for the Upper East Fork Allotment and the Lower East Fork Allotment by reducing the stocking rate and reducing the area of the two allotments. The EIS will analyze the effects of the proposed action and alternatives. The agency gives notice of the full National Environmental Policy Act (NEPA) analysis and decision making process on the proposal so interested and affected members of the public may participate and contribute to the final decision. The Sawtooth National Forest invites written comments and suggestions on the scope of the analysis and the issues to address.

DATES: Written comments concerning the proposed project should be postmarked within 30 days from the day after publication of this announcement in the **Federal Register**. Comments received in response to this solicitation, including the names and addresses to those who comment, will be considered part of the public record on this proposal and will be available to public inspection. The draft environmental impact statement is expected to be available for public review and comment in January, 2003 and the final environmental impact statement is expected to be available September, 2003.

ADDRESSES: Send written comments to Lisa Stoeffler, Deputy Area Ranger at

Stanley Ranger Station; HC 64, Box 9900; Stanley, Idaho, 83278. Faxes should be sent to 208–774–3003 and e-mails to *lstoeffler@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project and scope of analysis should be directed to Seth Phalen, Team Leader, at the above address, or phone at (202) 774–3000.

SUPPLEMENTARY INFORMATION: The analysis area is located in the White Cloud Mountain range in Custer County, south of Clayton, ID and is administered by the Sawtooth National Recreation Area (SNRA) of the Sawtooth National Forest. The two allotments are located in portions of Townships 7 and 8 North and Ranges 15, 16, and 17 East, Boise Meridian. The proposed action will be in compliance with Sawtooth National Forest Land and Resource Management Plan (Forest Plan of 1987), as amended, which provides overall guidance for management of this area and Public Law 92–400, the Organic Act for the Sawtooth National Recreation Area.

Purpose and Need for Action

Existing conditions on the allotments do not meet the desired future conditions identified in the Forest Plan. The AMPs were written prior to the listing of threatened chinook salmon, steelhead trout, bull trout, Canada lynx and Utes' Ladies Tresses and do not reflect their needs. Ten years of monitoring the project area has shown consistent overuse of riparian vegetation. The purpose and need for the proposed action is to prepare new AMPs to meet the present Forest Service policy and direction, Forest Plan direction, standards and guidelines, and to protect recently listed species.

Proposed Action

The Proposed Action would authorize grazing on the allotments but at reduced stocking rates and would reduce the area available for grazing within the two allotments. AMPs would be revised to reflect these changes. An adaptive management strategy, which would allow for flexibility during the implementation for grazing strategy, would allow permittees to respond to changing conditions and unexpected results. Permitted numbers and seasons would be modified as necessary to meet standards, based on monitoring results of the previous season.

Possible Alternatives

Possible alternatives include: Alt. 1—continued grazing as currently permitted (No action); Alt. 2—reduced stocking rate and permitted area; Alt. 3—reduced stocking rate with the current permitted area; Alt. 4—current stock rate and permitted area under a deferred grazing system (applies to the Lower East Fork Allotment only), and Alt. 5—No grazing (grazing phased out).

Responsible Official

The responsible official is the Area Ranger of the Sawtooth National Recreation Area, Sawtooth National Forest.

Nature of the Decision To Be Made

The responsible official will decide if domestic livestock grazing can occur within the analysis area, and if so, where within the analysis area and at what intensity (timing and duration). The responsible official will also decide what structural range improvements (fences, water troughs, *etc.*), if any, are needed.

Scoping Process

Public notices have been placed in local newspapers.

Preliminary Issues

The following preliminary issues have been identified. (1) Livestock grazing may affect water quality and habitat for listed fish. (2) Livestock grazing may affect riparian and upland vegetation. (3) Livestock grazing may affect wildlife habitat. (4) Livestock grazing may affect the recreation experiences of visitors. (5) Changes in the current grazing numbers may affect the permittees.

Early Notice of Importance of Public Participation in Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days form the date of Environmental Protect Agency publishes the notice of availability in the **Federal Register**.

The Forest Services believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues raised by the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: August 16, 2002.

Ruth Monahan,

Sawtooth Forest Supervisor.

[FR Doc. 02–21402 Filed 8–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra and Sequoia National Forests' Resource Advisory Committee (RAC) for Fresno County will meet on September 17, 2002, 6:30–9:15 p.m. The Fresno County Resource Advisory Committee will meet at the Forest Supervisor's office Clovis, CA. The purpose of the meeting is for the Resource Advisory Committee to receive project proposals for recommendations to the Forest Supervisor for expenditure of Fresno County Title II funds.

DATES: The Fresno RAC meeting will be held on September 17, 2002. The meeting will be held from 6:30 p.m. to 9:15 p.m.

ADDRESSES: The Fresno County RAC meeting will be held at the Sierra National Forest Supervisor's office, 1600 Tollhouse Road, Clovis, CA.

FOR FURTHER INFORMATION CONTACT: Sue Exline, USDA, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93611; (559) 297–0706 ext. 4804; e-mail *skexline@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include; (1) Review and approve the July 16, 2002 meeting notes; (2) Consideration of Title II project proposals from the public and from the RAC members; (3) Confirm the date, location and agenda of the next meeting; (4) Public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: August 15, 2002.

Ray Porter,

District Ranger.

[FR Doc. 02–21353 Filed 8–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Central Idaho Resource Advisory Committee; Salmon-Challis National Forest; Butte, Custer, and Lemhi Counties, ID

AGENCY: Forest Service, USDA Forest Service.

ACTION: Notice of meeting of the Resource Advisory Committee.

SUMMARY: The Central Idaho Resource Advisory Committee will meet at 5 p.m., September 4, 2002 at the Lost River Ranger District Office, Mackay, Idaho. The 15-member committee will evaluate proposed resource projects for recommendation to the Salmon-Challis National Forest , using funds made available through Title II of the Secure Rural Schools and Community Self-determination Act. The meeting is open to the public and time will be scheduled for public comments.

The Central Idaho Resource Advisory Committee was established by the Secretary of Agriculture under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000 to work collaboratively with the Salmon-Challis National Forest to provide advice and recommendations consistent with the purposes of the Act.

George P. Matejko,

Forest Supervisor, Salmon-Challis National Forest, Designated Federal Official.

[FR Doc. 02–21403 Filed 8–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Potassium Permanganate From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: August 22, 2002.

FOR FURTHER INFORMATION CONTACT: John Conniff or Drew Jackson, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1009 or (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245–day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On February 26, 2002, the Department published a notice of initiation of administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China, covering the period January 1, 2001 through December 31, 2001. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 8780. The preliminary results are currently due no later than October 3, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit because of the time needed to consider certain factual issues in the case. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than January 31, 2003. *See* Decision Memorandum from Holly A. Kuga to Bernard T. Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the Department's main building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: August 16, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 02–21460 Filed 8–21–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Thursday, September 19, 2002. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the consensus process, select applicants for site visits, determine possible conflict of interest for site visited companies, review feedback to first stage applicants, discuss feedback checklist for Judges, begin stage III of the judging process, a debriefing on the State and Local

Workshop and a program update. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register 48 hours in advance in order to be admitted. Please submit your name, time of arrival, email address and phone number to Virginia Davis no later than Monday, September 16, 2002, and she will provide you with instructions for admittance. Ms. Davis' e-mail address is *virginia.davis@nist.gov* and her phone number is 301/975–2361.

DATES: The meeting will convene September 19, 2002 at 9 a.m. and adjourn at 4:30 p.m. on September 19, 2002. It is estimated that the closed portion of the meeting will last from 9 a.m. until 1 p.m. and the open portion of the meeting will last from 1 p.m. until 4:30 p.m.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 222, Red Training Room, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 11, 2002, that part of the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: August 15, 2002.

Arden L. Bement, Jr.,

Director.

[FR Doc. 02–21462 Filed 8–21–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081902A]

Proposed Information Collection; Comment Request; Southeast Region Electronic Reporting Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 21, 2002.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Poffenberger, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, Florida 33149,(phone 305–361–4263).

SUPPLEMENTARY INFORMATION:

I. Abstract

This data collection activity is a one-time survey to collect information from persons and/or companies that have been issued a federal fisheries permit in the Southeast Region. The purpose of the survey is to collect on the availability and use of personal computers and whether these persons and/or companies would be willing to report electronically via the Internet. There are several methods that can be undertaken by the National Marine Fisheries Service to make reporting data more efficient through electronic reporting, but the availability of personal computers and their use is an important part of determining how best to provide this alternative reporting methodology.

II. Method of Collection

The Southeast Fisheries Science Center will conduct this survey through the mail. A short form has been developed that is to be filled out by the permit holder (usually the vessel owner or manager of the seafood processing company) and returned to the Center in a pre-addressed, postage-paid envelope.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations (seafood dealers and fishermen).

Estimated Number of Respondents: 6,500.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 540.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Dated: August 16, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–21458 Filed 8–21–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by John T. Keegan From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

By letter dated September 6, 2001, Aram V. Terchunian filed with the Secretary of Commerce (Secretary) a notice of appeal on behalf of Peter and Nancy Fenner (Appellant), pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.,* and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the New York Department of State (State) to the Appellant's consistency certification for a U.S. Army Corps of Engineers' permit to build a catwalk and dock at West Hampton Dunes.

The CZMA provides that a timely objection by a state precludes any federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either ''consistent with the objectives'' of the CZMA (Ground I) or ''necessary in the interest of national security'' (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on either Ground I or Ground II. To make the determination that the proposed activity is ''consistent with the objectives'' of the CZMA, the Secretary must find that: (1) The activity furthers the national interest as articulated in §§ 302 or 303 of the CZMA, in a significant or substantial manner, (2) the national interest furthered by the activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively, and (3) there is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program. *See* 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Ms. Suzanne Bass, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Copies of comments will also be forwarded to the Appellant and the State.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the State and the Office of the Assistant General Counsel for Ocean Services.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Bass, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, 301–713–2967.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

Dated: August 4, 2002.

James R. Walpole,

General Counsel.

[FR Doc. 02–21453 Filed 8–21–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF ENERGY

[DE–PS07–02ID14265]

University Research for the High Temperature Superconductivity Program

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of competitive financial assistance solicitation.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for university research projects in partnership with a national laboratory in support of the High Temperature Superconductivity Program to expand the research base. The research must support Superconductivity for Electric Systems Program milestones, research objectives, and long-term goals. Information on Superconductivity for Electric Systems Program can be found at URL: *http://www.eren.doe.gov/superconductivity/pdfs/superconelectric_reg_materials.pdf.*

DATES: The issuance date of Solicitation Number DE–PS07–02ID14265 will be on or about August 15, 2002. The application, SF 424, technical proposal, and resumes, must have an IIPS transmission time stamp of not later than 5 p.m. MST on Friday, October 25, 2002. Late applications will not be considered.

ADDRESSES: Completed applications are required to be submitted via the U.S. Department of Energy Industry Interactive Procurement System (IIPS) at the following URL: *http://e-center.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Dahl, Contract Specialist at dahlee@id.doe.gov, facsimile at (208) 526–5548, or by telephone at (208) 526–7214.

SUPPLEMENTARY INFORMATION: DOE anticipates making approximately 5 cooperative agreement awards under this solicitation with a maximum estimated DOE funding of $200,000 per year for each cooperative agreement up to a three-year period, subject to the availability of funds. Approximately $3 million in federal funds are expected to be available to fund selected research projects over the three-year period. Cost share is not required. The solicitation is available in its full text via the Internet at the following address: *http://e-center.doe.gov.* The statutory authority for this program is the Department of Energy Organization Act of 1977, Public Law 95–91 and the Federal Non-Nuclear Energy Research and Development Act, Public Law 93.577. The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.087, Renewable Energy Research and Development.

Issued in Idaho Falls on August 15, 2002.

Michael L. Adams,

Acting Director, Procurement Services Division.

[FR Doc. 02–21418 Filed 8–21–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC02–520–000, FERC–520]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

August 16, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995,

44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by October 18, 2002.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE, Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426 and should refer to Docket No. IC02–520–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website at *www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us.* Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. User assistance for FERRIS is available at 202–502–2222, or by e-mail to *contentmaster@ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)502–8415, by fax at (202)208–2425, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–520 ''Application for Authority to Hold Interlocking Directorate Positions''[1] (OMB No. 1902–0083) is used by the Commission to implement the statutory provisions of Section 305(b) of the Federal Power Act (FPA), 16 U.S.C. 825d. Section 305(b) makes the holding of certain defined interlocking corporate positions unlawful unless the Commission has authorized the interlocks to be held, and requires the applicant to show in a form and manner as prescribed by the Commission, that neither public nor private interests will be adversely affected by the holding of the position. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 45.

Under part 45, each person that desires to hold interlocking positions must submit an application to the Commission for authorization, or if qualified, comply with the requirements for automatic authorization. The interlocking positions application requirements are set forth in Section 45.8; automatic authorization requirements are set forth in Section 45.9. In addition, a person already holding an existing authorized interlocking position, must apply for separate authorization under Section 45.4(a) when appointed to a new position within the same company. The information required under part 45 generally identifies the applicant, describes the various interlocking positions the applicant seeks authorization to hold, provides information on the applicant's financial interests, other officers and directors of the firms involved, and the nature of the business relationships among the firms.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually	Number of responses per respondent	Average burden hours per response	Total annual burden hours
(1)	(2)	(3)	(1)×(2)×(3)
28	1	51.8	1,450

Estimated cost burden to respondents is $81,591: (1,450 hours / 2,080 hours per year × $117,041 per year). The cost per respondent is equal to $ 2,914.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the

[1] Interlocking Directorates is defined as a number of separately organized and functioning corporations managed by the same or nearly the same group of directors; bringing about a community of interest between the companies.

burden of the collection of information on those who are to respond.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21385 Filed 8–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC02–598–000, FERC–598]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

August 16, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by October 18, 2002.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE, Washington, DC 20426. Comments may be filed either in paper format or electronically. Those filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 and should refer to Docket No. IC02–598–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *www.ferc.gov* and click on ''Make An E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us.* Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. User assistance for FERRIS is available at 202–502–8222, or by e-mail to *contentmaster@ferc.fed.us.*

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 208–2425, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–598 ''Determination for Entities Seeking Exempt Wholesale Generator Status'' (OMB No. 1902–0166) is used by the Commission to implement the statutory provisions of Section 32 of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by Section 711 of the Energy Policy Act of 1992, 16 U.S.C. 824d. Section 32(a) of PUHCA defines an Exempt Wholesale Generator (EWG) as an individual determined by the Commission to be engaged directly or indirectly through one or more affiliates, and exclusively in the business of owning and/or operating all or part of eligible facilities and selling electric energy at wholesale. An eligible facility may include interconnecting transmission facilities necessary to effect wholesale power sales. Persons granted EWG status will be exempt from regulation under PUHCA. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 365.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually	Number of responses per respondent	Average burden hours per response	Total annual burden hours
(1)	(2)	(3)	(1)×(2)×(3)
112	1	6	672

Estimated total cost burden to respondents is $37,813 (672 hours/2,080 hours per year x $117,041 per year). The cost per respondent is equal to $338.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21386 Filed 8–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–260–000, CP01–439–000, and CP02–142–000]

Columbia Gas Transmission Corporation; Notice of Public Meeting

August 16, 2002.

Take notice that a meeting is scheduled in the above-captioned proceedings for September 4, 2002, at 2 p.m., in Room No. 62–26, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The meeting was requested by Columbia Gas Transmission Corporation for the purpose of discussing potential modifications to the projects in the referenced dockets. Any interested persons may attend.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21384 Filed 8–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–100–000, et al.]

Mirant Neenah, LLC, et al.; Electric Rate and Corporate Regulation Filings

August 14, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Mirant Neenah, LLC; Alliant Energy Resources, Inc.; Mirant Wisconsin Investments, Inc.;

[Docket No. EC02–100–000]

Take notice that on August 7, 2002, Mirant Neenah, LLC (Mirant Neenah), Alliant Energy Resources, Inc. (Alliant Energy Resources), and Mirant Wisconsin Investments, Inc. (Mirant Wisconsin) tendered for filing a joint application for authorization for Mirant Wisconsin to sell its membership interests in Mirant Neenah to Alliant Energy Resources.

Comment Date: August 28, 2002.

2. ONEOK Power Marketing Company and ONEOK Energy Marketing and Trading Company, L.P.

[Docket No. EC02–101–000]

Take notice that on August 7, 2002, ONEOK Power Marketing Company (OPMC) and ONEOK Energy Marketing and Trading Company, L.P. (OEMT) submitted for filing an application pursuant to section 203 of the Federal Power Act to merge the facilities of OPMC into OEMT, both wholly owned subsidiaries of ONEOK, Inc.

Comment Date: August 28, 2002.

3. Black River Power, LLC

[Docket No. EC02–102–000]

Take notice that on August 12, 2002, Black River Power, LLC (Black River), tendered for filing, pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b (1994), and Part 33 of the Commission's regulations, 18 CFR part 33, an application for authorization of a disposition of jurisdictional facilities as a result of the transfer of control of Black River to a voting trust. The transaction is expected to result in the disposition of jurisdictional facilities consisting of Black River's rate schedules and transmission facilities interconnected with the Fort Drum Project, a 52 MW topping-cycle electric generation project located at the Fort Drum Army Base near Watertown, New York.

Comment Date: August 29, 2002.

4. Niagara Mohawk Power Corporation

[Docket No. ER02–1266–003]

Take notice that on August 8, 2002, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk) amended its Compliance Filing previously submitted in this proceeding on July 16, 2002 in conformance with the Federal Energy Regulatory Commission's July 1, 2002 Order in Docket No. ER02–1266–001.

Comment Date: August 29, 2002

5. Kentucky Utilities Company

[Docket Nos. ER02–2265–001, ER02–2267–001, ER02–2272–001, and ER02–2282–001]

Take notice that on August 9, 2002, Kentucky Utilities (KU) tendered for filing (1) a renumbered contract between KU and the City of Madisonville Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and (2) a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Dockets No. ER02–2265–000, ER02–2266–000, ER02–2267–000, ER02–2272–000, ER02–2282–000 and ER02–2282 . The renumbered SEPA Contract is designated Rate Schedule FERC No. 306.

Comment Date: August 30, 2002.

6. Kentucky Utilities Company

[Docket Nos. ER02–2268–001, ER02–2277–001, ER02–2278–001, and ER02–2279–001]

Take notice that on August 9, 2002, Kentucky Utilities (KU) tendered for filing (1) a renumbered contract between KU and the City of Falmouth Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and (2) a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2276–000. The renumbered SEPA Contract is designated Rate Schedule FERC No.310.

Comment Date: August 30, 2002.

7. Southern Company Services, Inc.

[Docket No. ER02–2442–000]

Take notice that on August 9, 2002, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Operating Companies), tendered for Commission review information and replacement tariff sheets concerning the accrual of post-retirement benefits other than pensions as set forth in Statement of Financial Accounting Standard No. 106 by the Financial Accounting Standards Board in agreements and tariffs of the Operating Companies (jointly and individually). The following Commission approved rate schedules are affected:

SoCos.—Rate Schedule No. 15
SoCos.—Rate Schedule No. 30
SoCos.—Rate Schedule No. 33
SoCos.—Rate Schedule No. 47
SoCos.—Rate Schedule No. 51
SoCos.—Rate Schedule No. 53
SoCos.—Rate Schedule No. 59
SoCos.—Rate Schedule No. 62
SoCos.—Rate Schedule No. 70
SoCos.—Rate Schedule No. 76
SoCos.—Rate Schedule No. 77
SoCos.—Rate Schedule No. 78
SoCos.—Rate Schedule No. 93
Alabama Power—Rate Schedule No. 145
Georgia Power—Rate Schedule No. 803
Georgia Power—Rate Schedule Nos. 824, 825 and 826
Georgia Power—Rate Schedule Nos. 836, 837, and 838
Mississippi Power—Rate Schedule No. 135
Gulf Power—Rate Schedule No. 82
Gulf Power—Rate Schedule No. 84

Comment Date: August 30, 2002.

8. Vermont Electric Power Company, Inc.

[Docket No. ER02–2443–000]

Take notice that on August 9, 2002, Vermont Electric Power Company, Inc. (VELCO) tendered for filing with the Federal Energy Regulatory Commission an executed Interconnection Agreement between VELCO and Entergy Nuclear Vermont Yankee, LLC (Entergy Nuclear VY) that sets forth the terms and conditions governing the interconnection between Entergy Nuclear VY's generating facility and VELCO's transmission system.

Comment Date: August 30, 2002.

9. Calpine Construction Finance Company, L.P.

[Docket No. ER02–2444–000]

Take notice that on August 9, 2002, Calpine Construction Finance Company, L.P. (CCFC) filed an executed power marketing agreement under which CCFC will make wholesale sales of electric energy to Calpine Energy Services, L.P. at market-based rates. CCFC requests privileged treatment of this agreement pursuant to 18 CFR 388.112.

Comment Date: August 30, 2002.

10. Citizens Communications Company

[Docket No. ER02–2445–000]

Take notice that on August 9, 2002, Citizens Communications Company (Citizens) filed a Non-Firm Interchange Agreement with Aha Macav Power Service. The filing relates to emergency service that Citizens' Arizona Electric Division (AED) provided to Aha Macav Power Service during an emergency outage on July 13 and 14, 2002.

Citizens requests waiver of the Commission's prior notice requirements, and an effective date of July 13, 2002 for the agreement. Copies of this filing were served on the entities listed on the certificate of service attached to the filing. In addition, a copy of the rate schedule is available for inspection at the offices of Citizens' Arizona Electric Division during regular business hours.

Comment Date: August 30, 2002.

11. San Diego Gas & Electric Company

[Docket No. ER02–2446–000]

Take notice that on August 9, 2002 San Diego Gas & Electric Company (SDG&E) tendered for filing its final cost reconciliation for the interconnection of 98 MW generation facilities owned by Wildflower Energy, LP (Wildflower). SDG&E seeks approval of final costs totaling $438,608.78.

Along with approval of its costs, SDG&E seeks approval of an increase in the monthly Operating & Maintenance (O&M) charges payable to SDG&E by Wildflower from .0025 times the cost of the installed facilities to .0035783 times the cost of the facilities. SDG&E also requests waiver of the sixty day notice period for the effective date of the increase, as required by 18 CFR 35.11.

SDG&E states that copies of its filing have been served on Wildflower.

Comment Date: August 30, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21383 Filed 8–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1326–002, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

August 15, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PJM Interconnection, L.L.C.

[Docket No. ER02–1326–002]

Take notice that on August 12, 2002, consistent with the Commission's May 31, 2002 ''Order Accepting Tariff Sheets As Modified'' 99 FERC ¶ 61,227, PJM Interconnection, L.L.C. (PJM) submitted an amended compliance filing in this docket revising the PJM Open Access Tariff and the Amended And Restated Operating Agreement of PJM Interconnection, L.L.C. to incorporate certain changes to its Economic Load Response Program.

Consistent with the May 31 Order, PJM requests an effective date of June 1, 2002 for the revisions. Copies of this filing have been served on all persons on the service list in Docket No. ER02–1326–000, all PJM members, and the state electric utility commissions in the PJM region.

Comment Date: September 3, 2002.

2. Illinois Power Company

[Docket No. ER02–1400–002]

Take notice that on August 12, 2002, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, filed a First Revised Interconnection and Operating Agreement (First Revised IOA). The First Revised IOA is subject to Illinois Power's Open Access Transmission Tariff. Illinois Power requests an effective date of March 8, 2002 for the First Revised IOA.

Comment Date: September 3, 2002.

3. American Electric Power Service Corporation

[Docket No. ER02–1817–002]

Take notice that on August 12, 2002, American Electric Power Service Corporation (AEP) tendered for filing with the Federal Energy Regulatory Commission (Commission) on behalf of Ohio Power Company, an operating company of the American Electric Power System (collectively AEP) amendments to an Interconnection and Operation Agreement between AEP and Lima Energy Company (LEC). The amendments are filed in compliance with the Commission's Order issued on July 12, 2002 in the above-captioned proceeding.

Comment Date: September 3, 2002.

4. Kentucky Utilities Company

[Docket No. ER02–2269–001]

Take notice that on August 9, 2002, Kentucky Utilities (KU) tendered for filing (1) a renumbered contract between KU and the City of Bardwell Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and (2) a fully

executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2269–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 307.

Comment Date: August 30, 2002.

5. Kentucky Utilities Company

[Docket No. ER02–2270–001]

Take notice that on August 9, 2002, Kentucky Utilities (KU) tendered for filing with the Federal Energy Regulatory Commission (Commission) a renumbered contract between KU and the City of Barbourville Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2270–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 304.

Comment Date: August 30, 2002.

6. Kentucky Utilities Company

[Docket No. ER02–2271–001]

Take notice that on August 9, 2002, Kentucky Utilities (KU) tendered for filing (1) a renumbered contract between KU and the City of Bardstown Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and (2) a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2271–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 302.

Comment Date: August 30, 2002.

7. Kentucky Utilities Company

[Docket No. ER02–2273–001]

Take notice that on August 9, 2002, Kentucky Utilities Company (KU) tendered for filing with the Federal Energy Regulatory Commission (Commission) a renumbered contract between KU and the City of Frankfort Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2273–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 311.

Comment Date: August 30, 2002.

8. Kentucky Utilities Company

[Docket No. ER02–2274–001]

Take notice that on August 9, 2002, Kentucky Utilities Company (KU) tendered for filing with the Federal Energy Regulatory Commission (Commission) a renumbered contract between KU and the City of Benham Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2274–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 308.

Comment Date: August 30, 2002.

9. Kentucky Utilities Company

[Docket No. ER02–2275–001]

Take notice that on August 9, 2002, Kentucky Utilities Company (KU) tendered for filing with the Federal Energy Regulatory Commission (Commission) a renumbered contract between KU and the City of Corbin Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2275–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 309.

Comment Date: August 30, 2002.

10. Kentucky Utilities Company

[Docket No. ER02–2276–001]

Take notice that on August 9, 2002, Kentucky Utilities Company(KU) tendered for filing with the Federal Energy Regulatory Commission (Commission) a renumbered contract between KU and the City of Falmouth Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2276–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 310.

Comment Date: August 30, 2002.

11. Kentucky Utilities Company

[Docket Nos. ER02–2280–001 and ER02–2281–001

Take notice that on August 9, 2002, Kentucky Utilities Company (KU) tendered for filing with the Federal Energy Regulatory Commission (Commission) a renumbered contract between KU and the City of Providence Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket Nos. ER02–2280–000 and ER02–2281–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 305.

Comment Date: August 30, 2002.

12. Kentucky Utilities Company

[Docket No. ER02–2283–001]

Take notice that on August 9, 2002, Kentucky Utilities (KU) tendered for filing with the Federal Energy Regulatory Commission (Commission) a renumbered contract between KU and the City of Owensboro Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2283–000. The renumbered SEPA Contract is designated Rate Schedule FERC No 300.

Comment Date: August 30, 2002.

13. Kentucky Utilities Company

[Docket No. ER02–2284–001]

Take notice that on August 9, 2002, Kentucky Utilities Company(KU) tendered for filing with the Federal Energy Regulatory Commission (Commission) a renumbered contract between KU and the City of Paris Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2284–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 301.

Comment Date: August 30, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21382 Filed 8–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

August 16, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. Copies of these filings are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 508–8222 or for TTY, (202) 208–1659.

EXEMPT

Docket No.	Date filed	Presenter or requester
1. Project No. 2612–005.	8–5–02	Don Klima.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21387 Filed 8–21–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0035; FRL–7187–6]

Substantial Risk Information Reporting under Section 8(e) of the Toxic Substances Control Act; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment on the following Information Collection Request (ICR): Substantial Risk Information Reporting under Section 8(e) of the Toxic Substances Control Act (TSCA) (EPA ICR No. 0794.10, OMB No. 2070–0046). This ICR involves a collection activity that is currently approved and scheduled to expire on January 31, 2003. The information collected under this ICR relates to reporting requirements placed on persons who manufacture, import, process, or distribute in commerce chemical substances or mixtures and who obtain information that such substances or mixtures present a substantial risk of injury to health or the environment. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPPT–2002–0035, must be received on or before October 21, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0035 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Richard Hefter, Risk Assessment Division (7403M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7649; fax number: (202) 564–1626; e-mail address: hefter.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a company that manufactures, imports, processes, or distributes in commerce a chemical substance or mixture and which obtains information that reasonably supports the conclusion that such substance or mixture presents a substantial risk of

injury to health or the environment. Potentially affected categories and entities may include, but are not limited to:

Type of business	NAICS codes
Chemical manufacturing	325
Petroleum refineries	32411

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

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

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 564–3119 and select item 4096 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket ID number OPPT–2002–0035. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0035 on the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPPT–2002–0035. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are 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 estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology,

e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Substantial Risk Information Reporting under Section 8(e) of the Toxic Substances Control Act (TSCA).

ICR numbers: EPA ICR No. 0794.10, OMB No. 2070–0046.

ICR status: This ICR is currently scheduled to expire on January 31, 2003. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: TSCA section 8(e) requires that any person who manufactures, imports, processes, or distributes in commerce a chemical substance or mixture and which obtains information that reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment must immediately inform EPA of such information. EPA routinely disseminates TSCA section 8(e) data it receives to other Federal agencies to provide information about newly discovered chemical hazards and risks.

Responses to the collection of information are mandatory (see 15 U.S.C. 2607(e)). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to range between 5.0 hours and 27.0 hours per response, depending upon the nature of the response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 218.

Frequency of response: On occasion.

Estimated average number of responses for each respondent: 1.

Estimated total annual burden hours: 6,431.

Estimated total annual burden costs: $675,255.

VI. Are There Changes in the Estimates from the Last Approval?

There is a decrease of 1,778 hours (from 8,209 hours to 6,431 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This change results from an overall decrease in section 8(e) reporting, primarily from a reduction in the number of follow-up/supplemental section 8(e) notices received. In previous ICR renewals, EPA used an historical average of 2.2 follow-up notices per each initial submission. This figure was based on EPA's experience and system for reviewing section 8(e) notices in place pre-1990. During that time EPA received fewer than 100 initial notices per year and was able to perform a much more detailed review of each notice received. The consequence of that review was that there was much more interaction with the submitting companies generating numerous follow-up notices and information submissions. However, during and since the 1991 Compliance Audit Program, because of the increase in initial notices submitted, EPA has contacted submitters for additional information only for those initial notices that are identified during the preliminary screening evaluation as needing additional information from the submitters. Consequently, the number of follow-up notices has fallen due to the changed nature of EPA's review of initial notices. Over the last 3 fiscal years, EPA has received 341 follow-up notices versus 653 initial notices, or approximately 0.5 follow-up notices per initial notice.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: August 9, 2002.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–21444 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7265–5]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby at (202) 566–1672, or e-mail at *Auby.susan@epa.gov.* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1608.03; State Program Adequacy Determination: Municipal Solid Waste Landfills (MSWLFs) and Non-municipal, Non-hazardous Waste Disposal Units that Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste in 40 CFR part 239; was approved 06/21/2002; OMB No. 2050–0152; expires 06/30/2005.

EPA ICR No. 1352.09; Community Right-to-Know Reporting Requirements under section 311 and 312 of the Emergency Planning and Community Right-to-Know (EPCRA); in 40 CFR part 370, and 40 CFR 370.25, 370.30, 370.21(c) (1) & (2); was approved 06/21/2002; OMB No. 2050–0072; expires 10/31/2004.

EPA ICR No. 1985.02; National Emission Standards for Hazardous Air Pollutants (NESHAP) for Leather Finishing Operations in 40 CFR 63.5330–63.5390 and 63.5400–63.5430; was approved 06/12/2002; OMB No. 2060–0478; expires 06/30/2005.

EPA ICR No. 1896.03; Disinfectants/Disinfection Byproducts, Chemical, and Radionuclides Information Collection Request; Unregulated Contaminant Monitoring Regulation List 2 Amendments (proposed rule); was approved 06/17/2002; OMB No. 2040–0204; expires 12/31/2004.

EPA ICR No. 1955.02; Operator Certification Guidelines and Operator Certification Expense Reimbursement Grants Program; OMB No. 2040–0236; expires 06/30/2005.

EPA ICR No. 1877.02; Milestones Plan for the Bleached Papergrade Kraft and Soda Sub-category of the Pulp, Paper, and Paperboard Point Source Category; in 40 CFR 430.24 (b) and (c); OMB No. 2040–0202; expires 06/30/2005.

EPA ICR No. 1829.02; Best Management Practices (BMP) for Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Kraft Sulfite Subcategory of the Pulp, Paper and Paperboard Point Source Category; in 40 CFR 430.03; was approved 06/28/2002; OMB No. 2040–0207; expires 06/30/2005.

EPA ICR No. 0270.41; Public Water systems Supervision Program Public Notification Amendment; in 40 CFR 141.31; 141.33 and 141.201–141.210, 40 CFR 142.14 (f), 142.15 (a), and 142.16(a); was approved 06/28/2002; OMB No. 2040–0090; expires 11/30/2004.

EPA ICR No. 2016.01; Drinking Water Customer Satisfaction Survey; was approved 07/24/2002; OMB No. 2040–0247; expires 05/31/2003.

EPA ICR No. 0969.06; Final Authorization for Hazardous Waste Management in 40 CFR part 271, subpart A, and 40 CFR 271.21, 271.23; was approved 07/25/2002; OMB 2050–0041; expires 07/31/2005.

Comment Filed

EPA ICR No. 2020.01; Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington in 40 CFR 49.121–49.139 and 49.9861–49.17810; on 06/21/2002; OMB filed comment.

Withdrawn/Continued

EPA ICR No. 1591.04; Regulation of Fuels and Fuel Additives; Reformulated Gasoline Terminal Receipt Date; OMB No. 2060–0277; on 06/24/2002 this ICR was withdrawn from OMB review.

Disapproved

EPA ICR No. 2060.01; Cooling Water Intake Structures Existing Facility (Phase II) Proposed Rule; on 06/17/2002 this ICR was disapproved by OMB.

Dated: August 15, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–21442 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7265–9]

Contractor and Subcontractor Access to Confidential Business Information Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has authorized prime contractors and subcontractors access to information that has been, or will be, submitted to EPA under sections 112 and 114 of the Clean Air Act (CAA). Some of the information may be claimed to be confidential business information (CBI) by the submitter.

DATES: Access to confidential data submitted to EPA will occur no sooner than September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Roberto Morales, Document Control Officer, Office of Air Quality Planning and Standards (C404–02), EPA, Research Triangle Park, North Carolina 27711, (919) 541–0880.

SUPPLEMENTARY INFORMATION: The EPA is issuing the notice to inform all submitters of information under sections 112 and 114 of the CAA that EPA may provide to the contractors and subcontractors listed below access to those materials on a need-to-know basis:

1. Prime Contractor

Environmental Consulting and Research, Inc. (EC/R), 2327 Englert Drive, Suite 100, Durham, NC 27713.

Contract 68D01055

2. Prime Contractor

Environmental Consulting and Research, Inc. (EC/R), 2327 Englert Drive, Suite 100, Durham, NC 27713.

Contract 68D01071

Subcontractors:
ICF, Inc.
Cadmus
Menzie-Cura
TRJ (Ted Johnson)
SBG (Susan B. Goldhabaer)

3. Prime Contractor

Environmental Consulting and Research, Inc. (EC/R), 2327 Englert Drive, Suite 100, Durham, NC 27713.

Contract 68D01076

Subcontractors:
ICF, Inc.
Eastern Research Group (ERG)
Pacific Environmental Services (PES)
MCNC
TRJ (Ted Johnson)
SBG (Susan B. Goldhabaer
Jim Capel

4. Prime Contractor

Eastern Research Group, Inc. (ERG), 110 Hartwell Avenue, Lexington, MA 02173.

Contract 68D01078

Subcontractors:
Research Triangle Institute (RTI)
EC/R, Inc.
Alpha-Gamma Technologies
SKT Consulting Services, Inc.

5. Prime Contractor

Eastern Research Group, Inc. (ERG), 110 Hartwell Avenue, Lexington, MA 02173.

Contract 69D01081

6. Prime Contractor

ICF, Inc., 9300 Lee Highway, Fairfax, VA 22031.

Contract 68D01052

Subcontractors:
EC/R, Inc.
Alpha-Gamma Technologies, Inc.
HeiTech Services, Inc.
Dr. Deborah Amaral
Jim Capel
Douglas Crawford Brown

TRJ (Ted Johnson)
Dr. Bradford Lyon
Dr. Thomas McKone

7. Prime Contractor

Research Triangle Institute, 3040 Cornwallis Road, Research Triangle Park, NC 27709.

Contract 68D01079

Subcontractors:
Caldwell Environmental
North State Engineering, Inc.
Razor Environmental

8. Prime Contractor

Pacific Environmental Services (PES), 5001 South Miami Boulevard, Research Triangle Park, NC 27709.

Contract 68D01077

Subcontractors:
Alpha Gamma Technologies
SKT Consulting Services, Inc.
Bennet King Environmental Consultant, Inc.

9. Prime Contractor

Research Triangle Institute (RTI), 3040 Cornwallis Road, Research Triangle Park, NC 27709.

Contract 68D01073

Subcontractor:

The Kervic Company

The contractors and subcontractors will provide technical support to the Office of Air Quality Planning and Standards in source assessment or with a source category survey and proceed through development of standards or control techniques guidelines, risk assessments, and national air toxics assessments.

In accordance with 40 CFR 2.301(h), EPA has determined that the above listed contractors and subcontractors require access to CBI submitted to EPA under sections 112 and 114 of the CAA in order to perform work satisfactorily under the above noted contracts. The contractors' and subcontractors' personnel will be given access to information submitted under sections 112 and 114 of the CAA. The contractors' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to CBI. All contractor and subcontractor access to CAA CBI will take place at the contractors' or subcontractors' facilities. The contractors and subcontractors will have appropriate procedures and facilities in place to safeguard the CAA CBI to which the contractors and subcontractors have access.

Clearance for access to CAA CBI is scheduled to expire on September 30, 2006 under contracts 68D01055, 68D01071, 68D01076, 68D01078, 68D01081, 68D01052 68D01079, 68D01077, and 68D1073.

Dated: August 14, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–21440 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7265–6]

Office of Research and Development; Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), Board of Scientific Counselors (BOSC), will hold an Executive Committee Meeting.

DATES: The Meeting will be held on September 23–24, 2002. On Monday, September 23, the Meeting will begin at 1 p.m., and recess at 4:30 p.m. On Tuesday, September 24, the Meeting will begin at 9 a.m. and adjourn at 4:30 p.m. Times noted are Eastern Time.

ADDRESSES: The Meeting will be held at the Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209, (703) 524–6400.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, (8701R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 564–6853.

SUPPLEMENTARY INFORMATION: Agenda items will include, but not be limited to: Discussion of BOSC Sub-Committee draft reports of ORD Labs/Centers site visits, Ad-hoc Subcommittee on Communications Progress Report, and Consultation on Biotechnology.

Anyone desiring a draft agenda may fax their request to Shirley R. Hamilton at (202) 565–2444. The meeting is open to the public. Any member of the public wishing to make a presentation at the meeting should contact Shirley Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Board of Scientific Counselors, Office of Research and Development (8701R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; or by telephone at (202) 564–6853. In general each individual making an oral presentation will be limited to a total of three minutes.

Dated: August 13, 2002.

Peter W. Preuss,

Director, National Center for Environmental Research.

[FR Doc. 02–21441 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0230; FRL–7197–2]

Organophosphate Pesticides, Availability of the Revised Organophosphate Cumulative Risk Assessment; Additional Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA is extending the comment period for the revised organophosphorous (OP) cumulative risk assessment until September 9, 2002. The revised OP cumulative risk assessment was released to the public for comment in the **Federal Register** of June 20, 2002, and the comment period was extended by a second document published in the **Federal Register** of July 22, 2002. The revised assessment was developed as part of EPA's process for tolerance reassessments under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). By allowing access and opportunity for comment on the revised risk assessment, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under FQPA are transparent and based on the best available information.

DATES: Comments, identified by the docket ID number OPP–2002–0230, must be received on or before September 9, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0230 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and

Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; fax number: (703) 308–8005; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining and submitting comments on the revisions to the OP pesticide cumulative risk assessment, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1 . *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/cumulative.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0230. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

As described in Unit III. of the notice published in the **Federal Register** of June 20, 2002 (67 FR 41993) (FRL–7183–1), you may submit your comments through the mail, in person, or electronically. Please follow the instructions that are provided in that notice. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket ID number OPP–2002–0230 in the subject line on the first page of your response.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

EPA is extending the comment period for the revised OP cumulative risk assessment, which was released to the public for comment in the **Federal Register** of June 20, 2002 (67 FR 41993) (FRL–7183–1). The documents provide information on the revisions that were made to the preliminary OP cumulative risk assessment, which was released to the public in the **Federal Register** of December 28, 2001 (66 FR 67249) (FRL–6816–5). The comment period was extended until August 21, 2002, through a notice published in the **Federal Register** of July 22, 2002 (67 FR 47797) (FRL–7190–7).

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 19, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–21568 Filed 8–20–02; 2:43 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7265–2]

Emission Guidelines for Existing Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of denial of petitions for reconsideration.

SUMMARY: In February 2001, EPA received two petitions for reconsideration of the emission guidelines for existing small municipal waste combustion (MWC) units (40 CFR part 60 subpart BBBB). The first

petition, dated February 2, 2001, was from Mr. Timothy Henderson representing Waste Energy Partners Limited Partnership, eco/Springfield, L.L.C., and Wasatch Energy Systems (f.k.a. Davis County Solid Waste Management and Energy Recovery Special Service District), which subsequently withdrew its petition (collectively Industry Petitioners). The second petition, dated February 5, 2001, was from the New York Public Interest Research Group, Inc. (NYPIRG). The petitions and all available information submitted by the petitioners along with information contained in the rulemaking docket (Docket No. A–98–18) were considered in reaching a decision on the merits of the petitions. After careful consideration, the EPA Administrator determined to deny the petitions and the petitioners were notified of this fact in separate letters signed by Jeffrey R. Holmstead, Assistant Administrator for the Office of Air and Radiation, and dated August 7, 2002 (Industry Petitioners) and August 14, 2002 (NYPIRG). Copies of the denial letters are contained in Docket No. A–98–18.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Stevenson at Combustion Group, Emission Standards Division (C439–01), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5264, facsimile number (919) 541–5450, electronic mail address *''stevenson.walt@epa.gov.''*

Dated: August 15, 2002.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–21443 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–P

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. section 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 information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Certified Statement for Semiannual Deposit Insurance Assessment.

Form Number: 6420/07A.

OMB Number: 3064–0057.

Annual Burden:

Estimated annual number of responses: 19,400.

Estimated time per response: 15 minutes.

Average annual burden hours: 4,850 hours.

Expiration Date of OMB Clearance: September 30, 2002.

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 this collection of information are welcome and should be submitted on or before September 23, 2002 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Certified statements are prepared to report and certify deposit liabilities and to compute the assessment payment due for deposit insurance protection.

Dated: August 7, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–21451 Filed 8–21–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

Previously announced date and time: Tuesday, August 20, 2002. Meeting closed to the public. This meeting was cancelled.

DATE & TIME: Tuesday, August 27, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Wednesday, August 28, 2002 and Thursday, August 29, 2002.

PLACE: 999 E Street, NW., Washington, DC (Ninth floor).

STATUS: This hearing will be open to the public.

MATTER BEFORE THE COMMISSION:

Electioneering Communications: Notice of Proposed Rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–21597 Filed 8–20–02; 3:49 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approved of a collection of information in use without OMB approval. The Collection of information concerns FEMA's collecting information about the financial state of affairs and the housing plans of disaster victims. FEMA needs the information in order to effectively evaluate an applicant's need for mortgage and rental assistance provided under the Mortgage and Rental Assistance Program.

The request is submitted under the emergency processing procedures in Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting that this collection of information be approved by August 12, 2002. The approval will authorize FEMA to use the collection through February 28, 2003.

FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely

processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the collection of information. This notice and request for comments is in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)).

SUPPLEMENTARY INFORMATION: The Mortgage and Rental Assistance Program is authorized by section 408(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended. The program was established to allow the Federal government to assist disaster victims who, as a result of financial hardship caused by a major disaster, are unable to continue paying their mortgage or rent and are in jeopardy of being evicted or foreclosed. In order for FEMA to comply with the statutory criterion of financial hardship for the Mortgage and Rental Assistance Program, we must collect financial information on the disaster assistance applicant to determine the level of financial loss and if the applicant qualifies as a hardship.

Collection of Information:

Title: Mortgage and Rental Assistance Program.

Type of Information Collection: Existing collection in use without OMB approval.

Forms: MRA Financial Certification; MRA Certification of Household Income; MRA Request for Additional Assistance; MRA Notice of Delinquency.

Abstract: Individuals requesting mortgage and rental assistance, will be required to provide, in writing, information about their financial state of affairs and their housing plans to that FEMA can effectively evaluate their need for mortgage and rental assistance. The requested information from the applicant is not available from any other source. The information collected has limited use and is only applicable to FEMA's Mortgage and Rental Assistance Program. The information collected from the applicant will be used exclusively for reviewing the financial loss of the applicant and making eligibility decisions. A FEMA disaster housing officer will review the information submitted in accordance with established program criteria and procedures.

Affected Public: Individuals and households.

Estimated Total Annual Burden Hours: 10,200 hours.

Information collection request	Number of respondents	Frequency of response	Time per response	Annual burden hours
MRA Financial Certification	2550	1	120 minutes	5100
MRA Certification of Household Income	2550	1	60 minutes	2550
MRA Request for Additional Assistance	2550	1	30 minutes	1275
MRA Notice of Delinquency	2550	1	30 minutes	1275
Total	2,550	1	Avg. 1 hr	10,200

Estimated Cost: The total estimated annual cost to the applicant is $105, 774.00. The cost is determined by the average hourly rate of $10.37 (average wage plus the price of a stamp) times the 10,200 estimated annual burden hours.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. Submit comments to OMB within 30-days of the publication date of this notice. To ensure that FEMA is fully aware of any comments or concerns that you share with OMB, please provide us with a copy of your comments. FEMA will continue to accept comments for 60 days from the date of this notice.

OMB Addressee: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Emergency Management Agency, 725 17th Street, NW., Washington, DC 20503.

FEMA Addressee: Submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and System Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472 or via e-mail at *InformationCollections@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Contact David Porter, Programs Specialist, Community and Family Services Branch, Recovery Division, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, at telephone number (202) 646–3939 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625, FAX number (202) 646–3347, or email address: *InformationCollections@fema.gov.*

Dated: August 6, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–20961 Filed 8–21–02; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested

persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Northfield Holdings Corp., Staten Island, New York; to become a bank holding company by acquiring 100 percent of the voting share of Northfield Savings Bank, Staten Island, New York.

2. NSB Holding Corp., Staten Island, New York; to acquire voting shares of Northfield Holdings Corp., Staten Island, New York.

3. NSB Holding Corp., Staten Island, New York; and Northfield Holdings Corp., Staten Island, New York; to acquire Liberty Bank, Avenel, New Jersey, and thereby engage in owning and operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

B. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Deerfield Bancshares, Inc., Clarksburg, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Clarksburg Commercial Bank, Clarksburg, Ohio.

Board of Governors of the Federal Reserve System, August 16, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–21349 Filed 8–21–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Docket No. R–1111

Policy Statement on Payments System RiskPotential Longer–Term Policy Direction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board is announcing its decision not to pursue in the foreseeable future the following policy options as part of a potential longer–term direction for the Board's payments system risk policy (PSR policy): (1) lowering self–assessed net debit caps and eliminating two–week average caps and (2) rejecting all payments with settlement–day finality that would cause an institution to exceed its daylight overdraft capacity level. The Board will, however, continue analyzing the benefits and drawbacks of a two–tiered pricing regime for daylight overdrafts in which institutions that pledge collateral to the Reserve Banks would pay a lower fee on their collateralized daylight overdrafts than on their uncollateralized daylight overdrafts.

FOR FURTHER INFORMATION CONTACT: Jeff Stehm, Assistant Director (202/452–2217), Stacy Coleman, Manager (202/452–2934), or John Gibbons, Senior Financial Services Analyst (202/452–6409), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

I. Background: In June 2001, the Board requested comment on a number of modifications to the PSR policy, including several near–term changes and a potential longer–term direction.[1] These requests for comment resulted from a broad review of the Board's PSR policy. This review evaluated the effectiveness of the Board's daylight credit policies, recognizing that significant changes had occurred in the banking, payments, and regulatory environment in the past few years. In conducting its review, the Board evaluated the effect of past policy actions on depository institutions' behavior and on the markets generally and also considered the effect of various payment system initiatives on payments activity and the demand for daylight credit.

Following the public comment period for the near–term changes, the Board made several changes to the policy, including allowing depository institutions with self–assessed net debit caps to pledge collateral to the Federal Reserve in order to access additional daylight overdraft capacity above their net debit cap levels and modifying the criteria used to determine a foreign banking organization's U.S. capital equivalency measure (66 FR 64419, December 13, 2001). Currently, the Board is focusing on the potential longer–term direction for the PSR policy. The policy options identified in the request for comment included the following: (1) lowering self–assessed net debit caps and eliminating two–week average caps, (2) rejecting all payments with settlement–day finality that would cause an institution to exceed its daylight overdraft capacity level, referred to as universal real–time monitoring (URTM), and (3) implementing a two–tiered pricing regime for daylight overdrafts in which institutions that pledge collateral to the Reserve Banks would pay a lower fee on their collateralized daylight overdrafts than on their uncollateralized daylight overdrafts (66 FR 30208, June 5, 2001).[2]

II. Summary of Comments and Analysis

The following section describes the options proposed in June 2001 for a potential longer–term PSR policy direction, summarizes and analyzes the comments received on the proposals, and discusses the rationale for not pursuing lower self–assessed net debit caps or URTM in the foreseeable future and for continuing to analyze a two–tiered pricing regime. The Board received a total of thirty–six comment letters on its potential longer–term PSR policy direction. The commenters included nineteen commercial banking organizations and seven of their trade associations, three clearing organizations, two other trade associations, and five Federal Reserve Banks. Not all commenters, however, addressed each of the options identified in the potential longer–term direction.

A. Net Debit Cap Levels

The Board evaluated the benefits and drawbacks of reducing self–assessed single–day net debit caps to levels near those of the current two–week average caps and eliminating two–week average net debit caps. Under the Board's PSR policy, the Reserve Banks establish limits or net debit caps on the maximum amount of uncollateralized daylight credit that depository institutions may incur in their Federal Reserve accounts. Net debit caps are calculated by applying a cap multiple from one of six cap classes to a depository institution's capital measure. An institution may request a self–assessed cap (average, above average, or high) by completing a

[1] The Board's current policy is described in the Policy Statement on Payments System Risk. The policy statement can be found at http://www.federalreserve.gov/paymentsystems/psr/policy.pdf.

[2] Payments with settlement–day finality include Fedwire funds and book–entry securities transfers, net settlement service (NSS) transactions, automated clearing house (ACH) credit transactions, and cash withdrawals.

self–assessment.[3] Alternatively, a depository institution may request a de minimis cap by submitting a board–of–director resolution to its Reserve Bank, or its Reserve Bank may assign an exempt–from–filing cap. A Reserve Bank also may assign a zero cap in consideration of certain factors, or a depository institution that wants to restrict its own use of Federal Reserve daylight credit may request a zero cap.

Twenty–nine organizations commented on lowering the single–day net debit cap and eliminating the two–week average cap. Of those organizations, sixteen did not support the proposal. Commenters generally did not support lowering the single–day net debit cap and eliminating the two–week average cap because of concerns about reduced flexibility in a depository institution's ability to process payments. Of the thirteen commenters that supported a lower single–day net debit cap and the elimination of the two–week average cap, most believed that Reserve Banks could reduce potential credit exposure while not affecting most depository institutions' ability to process payments. Several commenters also noted that eliminating the two–week average cap could reduce some of the policy's administrative burden. Finally, several commenters stated that institutions affected by a lower single–day net debit cap should have sufficient flexibility because depository institutions can now gain additional overdraft capacity by pledging collateral.

Three commenters that supported lowering net debit cap levels recommended that the Board lower them gradually to allow institutions an adjustment period and to allow the Federal Reserve time to evaluate the effects of lower net debit caps on the payments system. One organization that supported lowering net debit caps recommended that the policy allow institutions to exceed their net debit cap up to 20 percent on an infrequent basis without requiring collateral. Another organization supported lowering net debit caps as long as limits on collateralized daylight overdraft capacity above the net debit cap were set sufficiently high that institutions would not experience liquidity constraints.

The Board believes that reducing self–assessed net debit caps and eliminating two–week average caps generally would not affect most depository institutions' account–management and payment activities. In its request for comment, the Board noted that 96 percent of depository institutions with self–assessed net debit caps use less than 50 percent of their daylight overdraft capacity for their average peak overdrafts. Furthermore, Reserve Banks' credit exposure would be reduced by less than 5 percent if those institutions with self–assessed net debit caps that currently use more than 50 percent of their daylight overdraft capacity reduced their peak overdrafts to within the proposed net debit cap limits. As a result, lower net debit caps likely would not materially reduce Reserve Bank credit exposure. The current net debit cap limits do, however, provide institutions greater flexibility in managing their payments flows. In addition, the actual or potential liquidity implications of payment system initiatives, such as the Continuous Linked Settlement (CLS) system, have not been fully realized both in terms of the liquidity demands resulting from its implementation and its interaction with other payment systems. These potential liquidity demands, especially in times of financial market stress, need to be understood more fully for the Board to evaluate thoroughly the benefits and drawbacks of lowering self–assessed single–day net debit caps and eliminating two–week average caps.

The drawbacks of reduced flexibility in managing payment flows during a period of structural change in the payments system appear to outweigh the potential efficiencies gained by reducing administrative burden from lowering single–day net debit caps and eliminating two–week average caps. Accordingly, the Board will not consider lowering self–assessed single–day net debit caps and eliminating two–week average caps as a policy option in the foreseeable future.

B. Monitoring in Real Time All Institutions' Payments With Settlement–Day Finality

The Board also evaluated the benefits and drawbacks of URTM, which is defined as using the Reserve Banks' Account Balance Monitoring System (ABMS) to reject any payment with settlement–day finality that would cause an account holder's overdrafts to exceed its net debit cap.[4]

Thirty–one organizations commented on URTM. Of those organizations that responded, twenty–four did not support implementing URTM. Most commenters did not support URTM because of concerns that it could be unnecessarily restrictive for healthy depository institutions and could cause or exacerbate disruptions in the payments system. Many commenters also highlighted URTM's potential effects on ACH credit originations. In particular, several commenters raised concerns about URTM requiring prefunding for ACH credit originations and the potential negative effects on the value–dating aspect of ACH.[5] One commenter that supported URTM, however, stated that preventing institutions from exceeding their net debit cap with overdrafts due to payments with settlement–day finality would reduce risk in the payments system. Another commenter supported URTM because it likely would have only negligible effects on delays in the payments system and payments would be rejected or processed based on real–time balances.

If the Board were to implement URTM, a number of commenters recommended that it do so gradually to minimize potential disruptions to the payments system. For example, some commenters recommended introducing URTM by rejecting only Fedwire funds transfers at first and adding additional payment types later. Several commenters also recommended pending payments, instead of rejecting them, and making individual credit decisions on each payment. Under URTM the potential volume of payments that might be pended and need to be reviewed to make a credit decision could increase significantly, especially in times of market stress. Payments processing could be negatively affected as a result. In addition, the order in which payments could be released and an institution's access to its pended payments queue are issues that would need to be addressed in considering this option.

The Board believes the primary benefit of URTM is that it allows Reserve Banks to better manage the small, yet important, risk that a depository institution could unexpectedly fail with a significant daylight overdraft position that far

[3] The self–assessment requires an institution to evaluate and rate its creditworthiness, intraday funds management and controls, customer credit policies and controls, operating controls, and contingency procedures to support a higher daylight overdraft cap.

[4] ABMS provides intraday account information to the Reserve Banks and depository institutions. It serves as both an information source and a monitoring tool. ABMS is used primarily to give authorized Reserve Bank personnel a mechanism to control and monitor account activity for selected institutions. It also provides a means for institutions to obtain information concerning their intraday balances for managing daylight overdrafts. This information includes opening balances, a depository institution's daylight overdraft capacity and collateral limits, Fedwire funds and book–entry securities transfers, net settlement service transactions, and other payment activity.

[5] Value dating allows originators to submit ACH transactions for settlement on a later, specified date.

exceeds its net debit cap. The Board, however, also recognizes the benefits of financially healthy depository institutions having flexibility in managing their payment activity, especially during times of financial market stress. A policy that places a hard cap on daylight credit might cause or exacerbate disruptions for a given depository institution's payment flows or the payments system more generally. In addition, the liquidity implications related to CLS and its interaction with other payments systems need to be understood more fully for the Board to evaluate thoroughly the benefits and drawbacks of URTM. Concerns over disrupting the payments system, especially during times of market stress, likely outweigh the benefits of managing daylight overdrafts for unexpected failures of depository institutions. As a result, the Board will not implement URTM as a policy option in the foreseeable future.

C. Two–Tiered Pricing Regime

The Board will continue evaluating the benefits and drawbacks of implementing a two–tiered pricing regime that would assess a lower fee on collateralized daylight overdrafts than on uncollateralized daylight overdrafts. In evaluating the level of the daylight overdraft fee, the Board is considering policy changes that might more efficiently balance the costs, risks, and benefits associated with the provision of Federal Reserve intraday credit.

The daylight overdraft fee is a critical component of the PSR policy, and its modification in 1995 was the impetus for the Board's PSR policy review.[6] During the policy review, the Board compared Federal Reserve daylight credit extensions and private–sector lending under line–of–credit arrangements in assessing policy alternatives that might create a more efficient balance of the costs, risks, and benefits associated with Federal Reserve intraday credit. The most notable distinction between daylight credit extensions and private–sector lending is that private–sector lenders usually charge a lower rate when loans are collateralized. Collateralized lending generally carries a lower interest rate than uncollateralized lending because taking collateral lowers the lender's risk, allowing for a lower credit risk premium. In most situations, the Reserve Banks do not require collateral when extending daylight credit to depository institutions.[7] When Reserve Banks accept or require collateral for daylight credit extensions, however, the same daylight overdraft fee applies to both collateralized and uncollateralized daylight overdrafts. The Board also notes that the majority of Federal Reserve daylight credit extensions are currently implicitly collateralized because any collateral that a depository institution pledges to a Reserve Bank can be used to offset any of the institution's obligations to the Reserve Bank.[8]

Twenty–six organizations commented on two–tiered pricing. Twenty–two of those organizations supported some form of a two–tiered pricing regime. Most commenters favored a two–tiered pricing mechanism because they believed that it would reduce risk to the public sector and provide depository institutions the ability to weigh the costs and benefits of lower–rate collateralized credit with higher–rate uncollateralized credit.

One commenter that did not support two–tiered pricing stated that many smaller community banks might not be able to pledge collateral to receive a lower price, possibly placing them at a competitive disadvantage relative to larger depository institutions that likely are capable of pledging sufficient collateral to receive a lower price on most of their overdrafts. The Board is sensitive to policies that place certain depository institutions at a competitive advantage relative to other depository institutions. Most small depository institutions, however, generally do not pay daylight overdraft fees because they use little or no daylight credit. When pricing was introduced, the Board purposely permitted a minimal level of free overdrafts for most depository institutions based on the institution's capital. The purpose was to exempt from fees a very large number of depository institutions that account for a very small portion of total overdrafts.[9] As a result, the Board does not believe that small depository institutions would be disadvantaged by a two–tiered pricing policy relative to large depository institutions.

A number of commenters indicated that they would support two–tiered pricing only if lower–priced collateralized daylight credit could be used before uncollateralized daylight credit. In developing a two–tiered pricing regime, the Board intends to allow depository institutions with collateral pledged to the Federal Reserve to be charged the collateralized price for intraday credit used up to the level of collateral pledged as long as the collateral is not securing other outstanding obligations. Any additional intraday credit used that was uncollateralized would be priced higher. Moreover, depository institutions with self–assessed net debit caps that have been approved for collateralized daylight overdraft capacity above their net debit caps would be able to use the collateral pledged for this purpose to receive the collateralized price on the first dollars of daylight credit used. A few other commenters indicated that they support two–tiered pricing only if the rate for collateralized daylight credit is lower than the current rate.

Because two–tiered pricing may help balance the costs and benefits of providing daylight credit, and such a policy is more consistent with standard industry practices, the Board will continue to analyze the benefits and drawbacks of two–tiered pricing, taking into consideration the issues raised by commenters.

III. Competitive Impact Analysis

The Board has established procedures for assessing the competitive impact of rule or policy changes that have a substantial impact on payments system participants.[10] Under these procedures, the Board assesses whether a change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints, or due to a dominant market position of the Federal Reserve deriving from such differences. If no reasonable modifications will mitigate the adverse competitive effects, the Board will determine whether the expected benefits are significant enough to proceed with the change despite the

[6] The current daylight overdraft fee is 36 basis points, quoted as an annual rate on the basis of a 24–hour day. To obtain the daily overdraft fee for the standard Fedwire operating day, the 36–basis–point fee is multiplied by the fraction of the 24–hour day during which Fedwire is scheduled to operate. For example, under the current 18–hour Fedwire operating day, the effective daylight overdraft fee equals 27 basis points.

[7] The current policy allows depository institutions with self–assessed net debit caps to pledge collateral to gain additional capacity above their net debit caps.

[8] The majority of the collateral pledged to the Reserve Banks is pledged for discount window purposes. Federal Reserve Operating Circulars 1 and 10 provide Reserve Banks with a security interest in any of a depository institution's assets in the possession or control of, or maintained with, a Reserve Bank. These assets include collateral pledged to the Reserve Banks as well as items in the process of collection and any investment property that the institution may legally encumber.

[9] For depository institutions with regular access to the discount window, Reserve Banks also waive daylight overdraft fees if the charge for a reserve maintenance period is twenty–five dollars or less.

[10] These procedures are described in the Board's policy statement ''The Federal Reserve in the Payments System'', as revised in March 1990 (55 FR 11648, March 29, 1990).

adverse effects. The Board believes maintaining the status quo while continuing to analyze two–tiered pricing will have no adverse effect on the ability of other service providers to compete effectively with the Federal Reserve Banks in providing similar services.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed this notice under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in this notice.

By order of the Board of Governors of the Federal Reserve System, August 19, 2002.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 02–21454 Filed 8–21–02; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Office of Management Services; Cancellation of an Optional Form by the Department of State

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of State is canceling the following Optional Form because of low demand in the Federal Supply Service: OF 157, Medical Examination of Applicants for United States Visas.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Cunningham, Department of State, 202–312–9605.

DATES: Effective August 22, 2002.

Dated: August 14, 2002.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 02–21399 Filed 8–21–02; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comments Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office ant (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 1. Responsibilities of Awardees and Applicant Institutions for Reporting Possible Misconduct in Science (42 CFR part 50 subpart A)—0937–0198—Extension—As required by section 493 of the Public Health Service Act, the Secretary by regulation shall require that applicant and awardee institutions receiving PHS funds must investigate and report instances of alleged or apparent misconduct in science. *Respondents:* State and local governments, business or other for-profit, non-profit institutions—Reporting Burden Information—*Number of Respondents:* 3330; Number of Annual Responses: 3,430; *Average Burden per Response:* .273 hours; *Total Reporting Burden:* 938 hours—Disclosure Burden Information—*Number of Respondents;* 3330; Number of Annual Responses; 3390; *Average Burden per Response:* .5 hours; *Total Disclosure Burden:* 1,695 hours—Recordkeeping Burden Information—*Number of Respondents;* 40; Number of Annual Responses 140; *Average Burden per Response:* 7.77 hours; *Total Recordkeeping Burden:* 1088 hours—Total Burden—3,721 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov* or mail to OS Reports Clearance Office, Room 503H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington DC, 20201. Comments should be received within 60 days of this notice.

Dated: August 14, 2002.

William R. Beldon,

Acting, Deputy Assistant Secretary, Budget.

[FR Doc. 02–21426 Filed 8–21–02; 8:45 am]

BILLING CODE 4150–31–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–73]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Survey of Awareness, Knowledge, and Use of the National Report on Human Exposure to Environmental Chemicals by Health Care Providers, Public Health Professionals, Policy Makers, and Environmental Scientists—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background

A survey is proposed to determine audience awareness, knowledge, and uses of the *National Report on Human Exposure to Environmental Chemicals.*

The Division of Laboratory Sciences at the National Center for Environmental Health released the first of a series of biomonitoring reports, The *National Report on Human Exposure to Environmental Chemicals,* in March 2001. The next report is planned for late fall 2002. The first Report, published in 2001, established baseline data on 24 chemicals (metals, organophosphate pesticides, and phthalates) and trend data on lead, cadmium, and cotinine, which is a metabolite of nicotine. The 2002 Report will provide measurements for at least 75 more chemicals, including new data on the 27 chemicals listed in the 2001 Report. Subsequent reports will add more chemicals and trend data on chemicals included in previously published reports.

A survey is proposed to determine target audiences' awareness of the report, knowledge about the contents of the report, and audience uses of data in the report. Target audiences who will be surveyed include: (1) Scientists conducting research in related fields; (2) State, local, and public health agencies conducting health interventions and research on chemical exposures; (3) healthcare providers and other clinicians; and (4) local and State policy makers who regulate or make recommendations concerning uses and control of environmental chemicals.

The general purpose of the Report is ''to provide unique exposure information to scientists, physicians, and health officials to help prevent disease that results from exposure to environmental chemicals.'' There is no cost to the respondents.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Environmental Scientists	250	1	1	250
Public Health Officials	250	1	1	250
Health Care Providers	250	1	1	250
Policy Makers	250	1	1	250
Total				1,000

Dated: August 15, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–21354 Filed 8–21–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (Formerly the Health Care Financing Administration).

ACTION: Notice of modified or altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter a SOR, ''Carrier Medicare Claims Record (CMCR) System'', System No. 09–70–0501. We propose to delete published routine uses numbered 1, 3, 4, 5, 6, 7, 9, 12, 14, 16, 17, 18, 19, 21, 22, 23, 24, and an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA). We propose to delete published routine uses number 1 authorizing disclosure to claimants and their authorized representatives, number 3 authorizing disclosure to third party contacts to establish or verify information, number 4 authorizing disclosure to the Treasury Department for investigating alleged theft, number 5 authorizing disclosure to the United States Postal Service (USPS), number 6 authorizing disclosure to the Department of Justice (DOJ) to combat fraud and abuse, number 7 authorizing disclosure to the Railroad Retirement Board (RRB), number 9 authorizing disclosure to State Licensing Boards for review of unethical practices, number 12 authorizing disclosure to state welfare departments, number 14 authorizing disclosure to state audit agencies, number 16 authorizing disclosure to senior citizen volunteers to assist beneficiaries, number 17 authorizing disclosure to a contractor to recover erroneous Medicare payments, number 18 authorizing disclosure to state and other governmental Workers' Compensation Agencies, number 19 authorizing disclosure to insurance companies providing protection to enrollees, number 21 authorizing disclosure to an agency of a state government or established by law, number 22 authorizing disclosure to insurers who are primary payers to Medicare, number 23 authorizing disclosure to the Internal Revenue Service, number 24 authorizing disclosure to servicing fiscal intermediaries/carriers banks to transfer remittance advice to Medicare, and an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA).

A disclosure permitted under routine uses number 4, 5, 7, 9, 12, 14, 18, 21, 23, and to the SSA will be made a part of proposed routine use number 2. Proposed routine use number 2 will allow for release of information to ''another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent''. Disclosures permitted under published routine uses number 1, 3, 16, and 24 will be combined with published routine use number 2, which permits release to ''third party contacts,'' and covered by proposed routine use number 3. Disclosure authorized to ''insurance companies providing protection to enrollees'' under routine use 19 and to ''insurers who are primary payers to Medicare'' under routine use number 22 will be combined and listed as proposed routine use number 6. Disclosures permitted under published routine use number 17 will be covered by proposed routine use number 10, which will permit the release of data to contractors and grantees for the purposes of combating fraud and abuse. Disclosures permitted under published routine use number 6 will be covered by proposed routine use number 11, which will permit the release of data to other Federal agencies for the purposes of combating fraud and abuse. We propose to renumber published routine use number 20 as proposed routine use number 1 and modify the language to clarify the circumstances for disclosure to contractors and consultants.

The security classification previously reported as ''None'' will be modified to reflect that the data in this system is considered to be ''Level Three Privacy Act Sensitive.'' We are modifying the

language in the remaining routine uses to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is to properly pay medical insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: support regulatory and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, third party contacts, providers and suppliers of services dealing through fiscal intermediaries or carriers, Peer Review Organizations (PRO), insurance companies and other groups providing protection for their enrollees, insurers and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C § 1395y (b), an individual or organization for a research, evaluation, or epidemiological project, support constituent requests made to a congressional representative, support litigation involving the Agency related to this SOR, and combat fraud and abuse in certain Federally funded health care programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on August 8, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Anita Denion, Health Insurance Specialist, Business Solutions Operating Group, Division of Carrier Systems, Office of Information Services, CMS, Room N2–07–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–7022.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System

A. Statutory and Regulatory Basis for SOR

In 1994, CMS modified a SOR under the authority of sections 1842, 1862 (b) and 1874 of Title XVIII of the Social Security Act (42 United States Code (U.S.C.)) 1395u, 1395y (b), and 1395kk). Notice of the modification to this system, ''Carrier Medicare Claims Records, System No. 09–70–0501'' was published in the **Federal Register** (FR) 59 FR 37244 (July 21, 1994), an unnumbered routine use was added for the SSA at 61 FR 6645 (Feb. 21, 1996), three new fraud and abuse routine uses were added at 63 FR 38414 (July 16, 1998), and then at 65 FR 60552 (Aug. 18, 2000), two of the fraud and abuse routine uses were revised and a third deleted.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system contains information on Medicare beneficiaries who have submitted claims for Supplemental Medical Insurance (SMI) benefit (Medicare Part B), or individuals whose enrollment in an employer group health benefits plan covers the beneficiary. Information contained in this system consist of request(s) for payment, provider billing for patient services, prepayment plan for group Medicare practice dealing through a carrier, health insurance claim form, request(s) for medical payment, explanation of benefits, request for claim number verification, payment record transmittal, statement of person regarding Medicare payment for medical services furnished deceased patient, report of prior period of entitlement, itemized bills and other similar documents required to support payments to beneficiaries and to physicians and other suppliers of Part B services, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claims payment.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use''. The government will only release CMCR information that can be associated with an individual as provided for under ''Section III. Entities Who May Receive Disclosures Under Routine Use''. Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of CMCR. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.,* to properly pay medical insurance benefits to or on behalf of entitled beneficiaries.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the CMCR without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

5. To Agency contractors or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

Carriers and intermediaries occasionally work with contractors to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require CMCR information for the purposes of determining, evaluating, and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state, to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

The Treasury Department may require CMCR data for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

The USPS may require CMCR data for investigating alleged forgery or theft of reimbursement checks.

The RRB requires CMCR information to enable them to assist in the implementation and maintenance of the Medicare program.

The SSA requires CMCR data to enable them to assist in the implementation and maintenance of the Medicare program.

The IRS may require CMCR data for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plan or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y (b).

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with the HHS for administration of state supplementation payments for determinations of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act (the Act), for quality control studies, for determining eligibility of recipients of assistance under Titles IV, and XIX of the Act, and for the complete administration of the Medicaid program. CMCR data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state.

Occasionally state licensing boards require access to the CMCR data for review of unethical practices or non-professional conduct.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require CMCR information for auditing of Medicare eligibility considerations. Disclosure of physicians' customary charge data are made to state audit agencies in order to ascertain the corrections of Title XIX charges and payments. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this SOR.

State and other governmental worker's compensation agencies working with CMS to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

3. To third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

Third parties contacts require CMCR information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual or the representative of the applicant, and assist in the monitoring of Medicare

claims information of beneficiaries, including proper reimbursement of services provided.

Senior citizen volunteers working in the carriers and intermediaries' offices to assist Medicare beneficiaries request for assistance may require access to CMCR information.

Occasionally fiscal intermediary/carrier banks, automated clearing houses, value added networks (VAN), and provider banks, to the extent necessary transfer to providers electronic remittance advice of Medicare payments, and with respect to provider banks, to the extent necessary to provide account management services to providers using this information.

4. To providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Social Security Act.

Providers and suppliers of services require CMCR information in order to establish the validity of evidence, or to verify the accuracy of information presented by the individual as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

Providers and suppliers of services who are attempting to validate items on which the amounts included in the annual Physician/Supplier Payment List, or other similar publications are based.

5. To Peer Review Organizations (PRO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

PROs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. PROs will assist the state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

6. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (i.e., health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers, TPAs, HMOs, and HCPPs may require CMCR information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

7. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

CMCR data will provide for research, evaluation, and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

8. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

10. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

11. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require CMCR information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164,

65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information''.

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The CMCR system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act (PRA) of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, ''Security of Federal Automated Information Resources''. CMS has prepared a comprehensive system security plan as required by the Office and Management and Budget (OMB) Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems.'' Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- *Database Administrator* class owns the database objects; e.g., tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- *Quality Control Administrator* class has read and write access to key fields in the database;
- *Quality Indicator (QI) Report Generator* class has read-only access to all fields and tables;
- *Policy Research* class has query access to tables, but are not allowed to access confidential individual identification information; and
- *Submitter* class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards: All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMCR system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

There are several levels of security found in the CMCR system. Windows NT provides much of the overall system security. The Windows NT security model is designed to meet the C2-level criteria as defined by the U.S. Department of Defense's Trusted Computer System Evaluation Criteria document (DoD 5200.28–STD, December 1985). Netscape Enterprise Server is the security mechanism for all transmission connections to the system. As a result, Netscape controls all information access requests. Anti-virus software is applied at both the workstation and NT server levels.

Access to different areas on the Windows NT server are maintained through the use of file, directory and share level permissions. These different levels of access control provide security that is managed at the user and group level within the NT domain. The file and directory level access controls rely on the presence of an NT File System (NTFS) hard drive partition. This provides the most robust security and is tied directly to the file system. Windows NT security is applied at both the workstation and NT server levels.

C. Procedural Safeguards: All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified SOR on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the

authorized releases in accordance with the routine uses identified in this SOR.

CMS will monitor the collection and reporting of CMCR data. CMCR information on individuals is completed by contractor personnel and submitted to CMS through standard systems located at different locations. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of CMCR data.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure of identifiable data from the modified system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: August 15, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0501

SYSTEM NAME:

Carrier Medicare Claims Record (CMCR) System, HHS/CMS/OIS.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850. See Appendix A for various remote sites where this system is also maintained.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information on Medicare beneficiaries who have submitted claims for Supplemental Medical Insurance (SMI) benefit (Medicare Part B), or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in this system consist of request(s) for payment, provider billing for patient services, prepayment plan for group Medicare practice dealing through a carrier, health insurance claim form, request(s) for medical payment, explanation of benefits, request for claim number verification, payment record transmittal, statement of person regarding Medicare payment for medical services furnished deceased patient, report of prior period of entitlement, itemized bills and other similar documents required to support payments to beneficiaries and to physicians and other suppliers of Part B services, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claims payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the maintenance of this SOR is given under the authority of sections 1842, 1862 (b) and 1874 of Title XVIII of the Social Security Act (the Act) (42 United States Code (U.S.C.) sections 1395u, 1395y (b), and 1395kk).

PURPOSE(S):

The primary purpose of the SOR is to properly pay medical insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: support regulatory and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, third party contacts, providers and suppliers of services directly or through fiscal intermediaries or carriers, Peer Review Organizations (PRO), insurance companies and other groups providing protection for their enrollees, insurers and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y (b), an individual or organization for a research, evaluation, or epidemiological project, support constituent requests made to a congressional representative, support litigation involving the agency related to this SOR, and combat fraud and abuse in certain Federally funded health care programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the CMCR without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information''.

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We propose to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to,

benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

4. To providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

5. To Peer Review Organizations (PRO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

6. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

7. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

8. To a Member of Congress or congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

10. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

11. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the beneficiary's name, HIC, and assigned unique physician identification number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMCR system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Records are closed at the end of the calendar year in which paid, held 2 additional years, transferred to Federal records center and destroyed after another 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Business Solutions Operating Group, Division of Carrier Systems, Office of Information Services, CMS, 7500 Security Boulevard, Room S1–05–06, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, HIC, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system is obtained from third party agencies, Social Security Administration's Master Beneficiary Record, and CMS's Enrollment Database.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A. Health Insurance Claims

Medicare records are maintained at the CMS Central Office (see section 1 below for the address). Health Insurance Records of the Medicare program can also be accessed through a representative of the CMS Regional Office (see section 2 below for addresses). Medicare claims records are also maintained by private insurance organizations that share in administering provisions of the health insurance programs. These private insurance organizations, referred to as carriers and intermediaries, are under contract to the Health Care Financing Administration and the Social Security Administration to perform specific task in the Medicare program (see section three below for addresses for intermediaries, section four addresses the carriers, and section five addresses the Payment Safeguard Contractors.

I. Central Office Address

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

II. CMS Regional Offices

BOSTON REGION—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. John F. Kennedy Federal Building, Room 1211, Boston, Massachusetts 02203. Office Hours: 8:30 a.m.–5 p.m.

NEW YORK REGION—New Jersey, New York, Puerto Rico, Virgin Islands. 26 Federal Plaza, Room 715, New York, New York 10007, Office Hours: 8:30 a.m.–5 p.m.

PHILADELPHIA REGION—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. Post Office Box 8460, Philadelphia, Pennsylvania 19101. Office Hours: 8:30 a.m.–5 p.m.

ATLANTA REGION—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee. 101 Marietta Street, Suite 702, Atlanta, Georgia 30223, Office Hours: 8:30 a.m.–4:30 p.m.

CHICAGO REGION—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. Suite A–824, Chicago, Illinois 60604. Office Hours: 8 a.m.–4:45 p.m.

DALLAS REGION—Arkansas, Louisiana, New Mexico, Oklahoma, Texas, 1200 Main Tower Building, Dallas, Texas. Office Hours: 8 a.m.–4:30 p.m.

KANSAS CITY REGION—Iowa, Kansas, Missouri, Nebraska. New Federal Office Building, 601 East 12th Street—Room 436, Kansas City, Missouri 64106. Office Hours: 8 a.m.–4:45 p.m.

DENVER REGION—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. Federal Office Building, 1961 Stout St—Room 1185, Denver, Colorado 80294. Office Hours: 8 a.m.–4:30 p.m.

SAN FRANCISCO REGION—American Samoa, Arizona, California, Guam, Hawaii, Nevada. Federal Office Building, 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8 a.m.–4:30 p.m.

SEATTLE REGION—Alaska, Idaho, Oregon, Washington. 1321 Second Avenue, Room 615, Mail Stop 211, Seattle, Washington 98101. Office Hours 8 a.m.–4:30 p.m.

III. Intermediary Addresses (Hospital Insurance)

Medicare Coordinator, ASSOC. HOSPITAL SERV. MAINE (ME BC), 2 GANNETT DRIVE, SOUTH PORTLAND, ME 04106–6911.

Medicare Coordinator, Anthem New Hampshire, 300 GOFFS FALLS ROAD, MANCHESTER, NH 03111–0001.

Medicare Coordinator, BC/BS RHODE ISLAND (RI BC), 444 WESTMINSTER STREET, PROVIDENCE, RI 02903–3279.

Medicare Coordinator, EMPIRE MEDICARE SERVICES, 400 S. SALINA STREET, SYRACUSE, NY 13202.

Medicare Coordinator, COOPERATIVA, P.O. BOX 363428, SAN JUAN, PR 00936–3428.

Medicare Coordinator, MARYLAND B/C, P.O. BOX 4368, 1946 GREENSPRING AVE., TIMONIUM, MD 21093.

Medicare Coordinator, Highmark, P5103, 120 FIFTH AVENUE PLACE, PITTSBURGH, PA 15222–3099.

Medicare Coordinator, UNITED GOVERNMENT SERVICES, 1515 N. RIVERCENTER DR., MILWAUKEE, WI 53212.

Medicare Coordinator, ALABAMA B/C, 450 RIVERCHASE PARKWAY EAST, BIRMINGHAM, AL 35298.

Medicare Coordinator, FLORIDA B/C, 532 RIVERSIDE AVE., JACKSONVILLE, FL 32202–4918.

Medicare Coordinator, GEORGIA B/C, P.O. BOX 9048, 2357 WARM SPRINGS ROAD, COLUMBUS, GA 31908.

Medicare Coordinator, MISSISSIPPI B/C B MS, P.O. BOX 23035, 3545 LAKELAND DRIVE, JACKSON, MI 39225–3035.

Medicare Coordinator, NORTH CAROLINA B/C, P.O. BOX 2291, DURHAM, NC 27702–2291.

Medicare Coordinator, PALMETTO GBA A/RHHI, 17 TECHNOLOGY CIRCLE, COLUMBIA, SC 29203–0001.

Medicare Coordinator, TENNESSEE B/C, 801 PINE STREET, CHATTANOOGA, TN 37402–2555.

Medicare Coordinator, ANTHEM INSURANCE CO. (ANTHEM IN), P.O. BOX 50451, 8115 KNUE ROAD, INDIANAPOLIS, IN 46250–1936.

Medicare Coordinator, ARKANSAS B/C, 601 GAINES STREET, LITTLE ROCK, AR 72203.

Medicare Coordinator, GROUP HEALTH OF OKLAHOMA, 1215 SOUTH BOULDER, TULSA, OK 74119–2827.

Medicare Coordinator, TrailBlazer, P.O. BOX 660156, DALLAS, TX 75266–0156.

Medicare Coordinator, Cahaba GBA, STATION 7, 636 GRAND AVENUE, DES MOINES, IA 50309–2551.

Medicare Coordinator, KANSAS B/C, P.O. BOX 239, 1133 TOPEKA AVE., TOPEKA, KS 66629–0001.

Medicare Coordinator, NEBRASKA B/C, P.O. BOX 3248, MAIN PO STATION, OMAHA, NE 68180–0001.

Medicare Coordinator, MUTUAL OF OMAHA, P.O. BOX 1602, OMAHA, NE 68101.

Medicare Coordinator, MONTANA B/C, P.O. BOX 5017, GREAT FALLS DIV., GREAT FALLS, MT 59403–5017.

Medicare Coordinator, Noridian, 4510 13TH AVENUE S.W., FARGO, ND 58121–0001.

Medicare Coordinator, UTAH B/C, P.O. BOX 30270, 2455 PARLEYS WAY, SALT LAKE CITY, UT 84130–0270.

Medicare Coordinator, WYOMING B/C, 4000 HOUSE AVENUE, CHEYENNE, WY 82003.

Medicare Coordinator, ARIZONA B/C, P.O. BOX 37700, PHOENIX, AZ 85069.

Medicare Coordinator, UGS, P.O. BOX 70000, VAN NUYS, CA 91470–0000.

Medicare Coordinator, Regents BC, P.O. BOX 8110 M/S D–4A, PORTLAND, OR 97207–8110.

Medicare Coordinator, Premera BC, P.O. BOX 2847, SEATTLE, WA 98111–2847.

IV. Medicare Carriers

Medicare Coordinator, NHIC, 75 Sargent William Terry Drive, Hingham, MA 02044.

Medicare Coordinator, B/S Rhode Island (RI BS), 444 Westminster Street, Providence, RI 02903–2790.

Medicare Coordinator, Trailblazer Health Enterprises, Meriden Park, 538 Preston Ave., Meriden, CT 06450.

Medicare Coordinator, Upstate Medicare Division, 11 Lewis Road, Binghamton, NY 13902.

Medicare Coordinator, Empire Medicare Services, 2651 Strang Blvd., Yorktown Heights, NY, 10598.

Medicare Coordinator, Empire Medicare Services, NJ, 300 East Park Drive, Harrisburg, PA 17106.

Medicare Coordinator, Triple S, #1441 F.D., Roosvelt Ave., Guaynabo, PR 00968.

Medicare Coordinator, Group Health Inc., 4th Floor, 88 West End Avenue, New York, NY 10023.

Medicare Coordinator, Highmark, P.O. Box 89065, 1800 Center Street, Camp Hill, PA 17089–9065.

Medicare Coordinator, Trailblazers Part B, 11150 McCormick Drive, Executive Plaza 3 Suite 200, Hunt Valley, MD 21031.

Medicare Coordinator, Trailblazer Health Enterprises, Virginia, P.O. Box 26463, Richmond, VA 23261–6463. United Medicare Coordinator, Tricenturion, 1 Tower Square, Hartford, CT 06183.

Medicare Coordinator, Alabama B/S, 450 Riverchase Parkway East, Birmingham, AL 35298.

Medicare Coordinator, Cahaba GBA, 12052 Middleground Road, Suite A, Savannah, GA 31419.

Medicare Coordinator, Florida B/S, 532 Riverside Ave, Jacksonville, FL 32202–4918.

Medicare Coordinator, Administar Federal, 9901 Linnstation Road, Louisville, KY 40223.

Medicare Coordinator, Palmetto GBA, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, CIGNA, 2 Vantage Way, Nashville, TN 37228.

Medicare Coordinator, Railraod Retirement Board, 2743 Perimeter Parkway, Building 250, Augusta, GA 30999.

Medicare Coordinator, Cahaba GBA, Jackson Miss, P.O. Box 22545, Jackson, MI 39225–2545.

Medicare Coordinator, Adminastar Federal (IN), 8115 Knue Road, Indianapolis, IN 46250–1936.

Medicare Coordinator, Wisconsin Physicians Service, P.O. Box 8190, Madison, Wi 53708–8190.

Medicare Coordinator, Nationwide Mutual Insurance Co., P.O. Box 16788, 1 Nationwide Plaza, Columbus, Oh 43216–6788.

Medicare Coordinator, Arkansas B/S, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Arkansas-New Mexico, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Palmetto GBA—DMERC, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, Trailblazer Health Enterprises, 901 South Central Expressway, Richardson, TX 75080.

Medicare Coordinator, Nordian, 636 Grand Avenue, Des Moines, IA 50309–2551.

Medicare Coordinator, Kansas B/S, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

Medicare Coordinator, Kansas B/S—NE, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0239.

Medicare Coordinator, Montana B/S, P.O. Box 4309, Helena, MT 59601.

Medicare Coordinator, Nordian, 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Noridian Bcbsnd (C0), 730 N. Simms #100, Golden, CO 80401–4730.

Medicare Coordinator, Noridian Bcbsnd(WY), 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Utah B/S, P.O. Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

Medicare Coordinator, Transamerica Occidental, P.O. Box 54905, Los Angeles, CA 90054–4905.

Medicare Coordinator, NHIC—California, 450 W. East Avenue, Chico, CA 95926.

Medicare Coordinator, Cigna, Suite 254, 3150 Lakeharbor, Boise, ID 83703.

Medicare Coordinator, Cigna, Suite 506, 2 Vantage Way, Nashville, TN 37228.

V. Payment Safeguard Contractors

Medicare Coordinator, Aspen Systems Corporation, 2277 Research Blvd., Rockville, MD 20850.

Medicare Coordinator, DynCorp Electronic Data Systems (EDS), 11710 Plaza America Drive, 5400 Legacy Drive, Reston, VA 20190–6017.

Medicare Coordinator, Lifecare Management Partners Mutual of Omaha Insurance Co., 6601 Little River Turnpike, Suite 300, Mutual of Omaha Plaza, Omaha, NE 68175.

Medicare Coordinator, Reliance Safeguard Solutions, Inc., P.O. Box 30207, 400 South Salina Street, 2890 East Cottonwood Pkwy., Syracuse, NY 13202.

Medicare Coordinator, Science Applications International, Inc., 6565 Arlington Blvd. P.O. Box 100282, Falls Church, VA.

Medicare Coordinator, California Medical Review, Inc., Integriguard Division Federal Sector Civil Group, One Sansome Street, San Francisco, CA 94104–4448.

Medicare Coordinator, Computer Sciences Corporation, Suite 600, 3120 Timanus Lane, Baltimore, MD 21244.

Medicare Coordinator, Electronic Data Systems (EDS), 11710 Plaza America Drive, 5400 Legacy Drive, Plano, TX 75204.

Medicare Coordinator, TriCenturion, L.L.C., P.O. Box 100282, Columbia, SC 29202.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KP, the Office of the Deputy Assistant Secretary for Administration (ODASA) [67 FR 8816], as last amended, February 26, 2002. This notice reflects the restructuring of the Office of the Deputy Assistant Secretary and the realignment of functions within the Office.

This Chapter is amended as follows:

1. Chapter KP, Office of the Deputy Assistant Secretary for Administration

A. Delete KP.10 Organization in its Entirety and Replace With the Following:

KP.10 Organization. The Office of the Deputy Assistant Secretary for Administration is headed by the Deputy Assistant Secretary who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

- Immediate Office of the Deputy Assistant Secretary for Administration (KPA)
- Office of Information Services (KPB)
- Office of Financial Services (KPC)
- Office of Management Resources (KPD)
- Office of Grants Management (KPG)
- Equal Employment Opportunity and Civil Rights Staff (KPH)

B. Delete KP.20 Functions, Paragraph A, The Office of the Deputy Assistant Secretary for Administration (ODASA), in its Entirety and Replace With the Following:

KP.20 Functions. A. The Immediate Office of the Deputy Assistant Secretary for Administration (ODASA) directs and coordinates all administrative activities for the Administration for Children and Families (ACF). The Deputy Assistant Secretary for Administration serves as ACF's: Chief Financial Officer; Chief Grants Management Officer; Federal Manager's Financial Integrity Act (FMFIA) Management Control Officer; Principal Information Resource Management Official serving as Chief Information Officer; Deputy Ethics Counselor; Personnel Security Representative; and Reports Clearance Officer. The Deputy Assistant Secretary for Administration serves as the ACF liaison to the Office of the General Counsel, and as appropriate, initiates action in securing resolution of legal matters relating to management of the agency, and represents the Assistant Secretary on all administrative litigation matters.

The Deputy Assistant Secretary for Administration represents the Assistant Secretary in HHS and with other Federal agencies and task forces in defining objectives and priorities, and in coordinating activities associated with

Presidential Management Agenda initiatives. ODASA provides leadership of assigned ACF special initiatives arising from Departmental, federal and non-federal directives to improve service delivery to customers.

The Deputy Assistant Secretary for Administration provides day-to-day executive leadership and direction to the Immediate Office of the Deputy Assistant Secretary, Equal Employment Opportunity and Civil Rights Staff, Office of Information Services, Office of Financial Services, Office of Management Resources, and the Office of Grants Management. The Deputy Director for Administration assists the Deputy Assistant Secretary in carrying out the responsibilities of the Office.

The Immediate Office of the Deputy Assistant Secretary for Administration contains the Administrative Services Team, the Budget Team and the Physical Security and Safety Team.

The Administrative Services Team provides direction in meeting the human capital management needs within ODASA. The Team provides leadership, guidance, oversight and liaison functions for ODASA personnel related issues and activities as well as other administrative functions within ODASA. The Administrative Services Team coordinates with the Office of the Secretary to provide ODASA staff with a full array of personnel services, including position management, performance management, employee recognition, staffing, recruitment, employee and labor relations, employee assistance, payroll liaison, staff development and training, and special hiring and placement programs. The Team develops and maintains systems to track personnel actions to keep the Deputy Assistant Secretary for Administration and ODASA Office Directors informed about the status of personnel actions, employee programs, services and benefits.

The Budget Team manages the formulation and execution of ODASA's federal administration budget and assigned ACF program and common expense budgets. The Budget Team maintains budgetary controls on ODASA accounts, reconciling accounting reports and invoices, and monitoring all spending. The Team develops, defends and executes the assigned funds for rent, repair and alterations, facilities activities, telecommunication, information technology, personnel services and training. The Team also controls ODASA's credit card for small purchases.

The Physical Security and Safety Team is responsible for planning, managing, and directing ACF's safety, security, and emergency management programs. The Team serves as the lead for ACF in coordination and liaison with Departmental, GSA and other Federal agencies on implementation of federal physical security directives. The Physical Security and Safety Team serves as lead for all tenant security matters in the Aerospace Building. The Team is responsible for planning and executing ACF's environmental health program, and ensuring that appropriate occupational health and safety plans are in place. The Team is responsible for issuing, managing and controlling badge and cardkey systems to control access to agency space for security purposes.

C. Delete KP.20 Functions, Paragraph B, The Office of Information Services (OIS), in its Entirety and Replace With the Following:

B. The Office of Information Services (OIS) supports the Deputy Assistant Secretary in providing centralized information technology policy, procedures, standards and guidelines. The OIS Director serves as the Deputy Chief Information Officer, supporting the Chief Information Officer in the full range of activities required to carry out ACF's information technology (IT) and information resource management (IRM) programs. The Office provides liaison with OMB, GSA, and GAO on all IT and IRM matters and manages major interdepartmental IRM initiatives. It directs and coordinates ACF's Privacy Act responsibilities. The Office coordinates mandated OMB information collection approvals and plans. It directs and maintains ACF records and forms management programs. OIS develops long-range IRM plans; develops IRM policy, procurement plans and budgets for ACF information systems. The Office develops and implements procurement strategies for ADP support services. OIS reviews and analyzes all ADP acquisition documentation for compliance with applicable laws and regulations as well as for procurement strategy. It coordinates technical assistance provided to program offices on ADP support services procurements. The Office oversees the implementation of e-government policies through leadership and coordination with ACF program and staff offices; develops, recommends and implements policies, procedures, standards and guidelines; and serves as the ACF liaison with the Department and other federal and non-federal agencies to coordinate e-government strategies and policies.

OIS plans, manages, maintains and operates ACF's local area networks, nationwide area network and personal computers; provides for equipment and software acquisition, maintenance and user support for end-user computing; and manages and maintains a Help Desk for ACF users. OIS develops and implements policies and plans for and acquires and manages data communications services; provides liaison with HHS, GSA and private firms on data communications equipment and systems.

OIS designs, develops, implements and maintains application systems to support ACF budget, program and administrative systems. The Office provides technical assistance to ACF program offices procuring system support services; technical assistance to State and local agencies on ACF computer systems; develops software policy, procedures, standards and guidelines; and conducts required Departmental reviews of ADP systems.

OIS designs, develops, and maintains system support for e-government activities; provides technical assistance to ACF program offices for e-government support services; and provides technical assistance on e-government systems to State and local agencies.

The Office develops and/or implements agency telecommunications management policy in accordance with Federal regulations and procedures. The Office reviews and directs payment of agency telephone invoices. It recommends and advises on the design and function of telecommunications systems, based on user needs, costs and technological availability. The Office communicates with private industry service providers to coordinate the acquisition, installation and maintenance of voice/data telecommunications equipment and systems. It is responsible for other sources of communications capability such as pagers, cellular phone service, cable TV service, and audio conferencing equipment and service. It updates and maintains the databases for telephone lines and equipment inventories.

OIS establishes, implements, maintains and oversees an IT security program that assures adequate security is provided for all agency information collected, processed, transmitted, stored or disseminated in general support systems and applications. The Office develops and implements ACF policies, standards and procedures consistent with government-wide IT security policies; conducts the ACF system security activities required by OMB IT security directives; develops, implements and maintains a security

training plan for IT professionals; and provides security awareness training for all ACF staff.

D. Delete KP.20 Functions, Paragraph C, The Office of Financial Services (OFS), in its Entirety and Replace With the Following:

C. The Office of Financial Services (OFS) supports the Deputy Assistant Secretary for Administration in fulfilling ACF's Chief Financial Officer (CFO) and Federal Manager's Financial (FMFIA) Management Control Officer responsibilities including preparation of the CFO 5-Year Plan; performs audit oversight and liaison activities, including preparing reports to Congress, Office of the General Counsel and the Office of the Inspector General. OFS writes/interprets financial policy and researches appropriation law issues; oversees and coordinates ACF's FMFIA activities; performs debt management functions; develops and administers quality assurance, training and certification programs for grants management; and is responsible for the annual preparation and audit of ACF's financial statement requirements. The Office develops/interprets internal policies and procedures for ACF components and coordinates the management of ACF's interagency agreement activities.

The Office provides agency-wide guidance to program and regional office staff on grant related issues; including developing and interpreting financial and grants policy, coordinating strategic grants planning, facilitating policy advisory groups, and assuring consistent grant program announcements. The Office prepares, coordinates and disseminates action transmittals, information memoranda, and other policy guidance on financial and grants management issues; provides financial and grants administration technical assistance to ACF staff; directs and/or coordinates management initiatives to improve financial administration of ACF mandatory and discretionary grant programs. OFS develops and administers grants management training for ACF program and grants staff and administers grants management certification for ACF grants staff.

OFS is responsible for developing ACF policies and procedures under which States obtain Federal Financial Participation in the cost of automated systems development to support programs funded under the Social Security Act. It serves as the departmental focal point and coordinator for the development and implementation of strategies and policies related to payment integrity, welfare systems integration, electronic benefit transfer and related initiatives and programs; and provides leadership and guidance to interagency work groups in these areas for the Department.

The Office provides policy guidance, management leadership and coordination regarding the optimum inter-operation of the multitude of complex Federal, State, local, tribal and private information technology systems used to carry out ACF programs. OFS provides leadership and coordination in the areas of State systems assessments, systems design and planning, systems integration, data exchanges, information management, information security and electronic information exchanges.

E. Delete KP.20 Functions, Paragraph D, The Office of Organizational Development Services; Paragraph E, The Office of Customer Service and Administration; and Paragraph L, The Office of Administrative Services and Facilities Management in Their Entirety and Establish the Following:

D. The Office of Management Resources (OMR) advises the Deputy Assistant Secretary for Administration on human resource management, materiel resource management, and organizational and employee development activities for ACF. OMR provides leadership, direction and oversight for human resource management services provided to ACF through a contract and supplemental memoranda of understanding (MOUs) with the Program Support Center (PSC). OMR, in collaboration and coordination with the PSC, provides advice and assistance to ACF managers in their personnel management activities, including recruitment, selection, position management, performance management, designated performance and incentive awards and employee assistance programs and other services to ACF employees. OMR provides management, direction and oversight of the following personnel administrative services: the exercise of appointing authority, position classification, awards authorization, performance management evaluation, personnel action processing and record keeping, merit promotion, special hiring and placement programs. OMR serves as liaison between ACF, the Department and the Office of Personnel Management. It provides technical advice and assistance on personnel policy, regulations and laws. OMR formulates and interprets policies pertaining to existing personnel administration and management matters and formulates and interprets new human resource programs and strategies.

The Office, in collaboration and coordination with the PSC, provides oversight and management advisory services on all ACF employee relations issues. The Office plans and coordinates ACF employee relations and labor relations activities, including the application and interpretation of the Federal Labor Management Relations Program, collective bargaining agreements, disciplinary and adverse action regulations and appeals. The Office participates in the formulation and implementation of policies, practices and matters affecting bargaining unit employees' working conditions by assuring management's compliance with the Federal Labor Relations Program (5 U.S.C. Chapter 71). The Office maintains oversight, leadership and direction of the labor-management and employee relations services provided under contract with the PSC.

OMR is responsible for formulation, planning, analysis and development of ACF human resource policies and programs, workforce planning, and liaison functions to the Department on ACF payroll matters.

The Office formulates and oversees the implementation of ACF-wide policies, regulations and procedures concerning all aspects of the Senior Executive Service (SES), and SES-equivalent recruitment, staffing, position establishment, compensation, award, performance management and related personnel areas. The Office manages the ACF SES performance recognition systems and provides services for functions of the Executive Secretary to the Executive Resources Board and the Performance Review Board. OMR coordinates Schedule C and executive personnel activity with the Office of the Secretary and is the focal point for data, reports and analyses relating to Schedule C, SES and Executive-level personnel.

OMR administers the ACF Ethics program, the Personnel Security program, and the Drug Testing program in coordination with the Department's Office of Government Ethics, the Office of General Counsel and the Office of Security and Drug Testing.

The Office of Management Resources directs and manages ACF's administrative support services, and materiel management programs and activities. The Office provides, prepares, coordinates and disseminates information, policy and procedural guidance on administrative and materiel management issues on an agency-wide basis. It directs and/or coordinates

management initiatives to improve ACF administrative and materiel management services with the goal of continually improving services while containing costs.

The Office establishes and manages contracts and/or blanket purchase agreements for administrative support and materiel management services, including space design, building alteration and repair, reprographics, moving, labor, property management and inventory, systems furniture acquisitions and assembly, and fleet management.

The Office provides management and oversight of ACF mail delivery services and activities, including Federal and contractor postal services nationwide, covering all classes of U.S. Postal Service mail, priority and express mail services, and courier services, etc.

The Office directs all activities associated with the ACF Master Housing Plan, including coordination and development of the agency long-range space budget; planning, budgeting, identification, solicitation, acceptance and utilization of office and special purpose space, repairs, and alterations; serving as principal liaison with GSA and other Federal agencies, building managers and materiel engineers, architects and commercial representatives, for space acquisition, negotiation of lease terms, dealing with sensitive issues such as handicapped barriers, and space shortages. It develops and maintains space floor plans and inventories, directory boards, and locator signs. The Office serves as principal liaison with private and/or Federal building managers for all administrative services and materiel management activities.

The Office plans, manages/operates employee transportation programs, including shuttle service and fleet management; employee and visitor parking. The Office develops and implements ACF travel policies and procedures consistent with Federal requirements. The Office provides technical assistance and oversight; coordinates ACF use of the Travel Management System; manages employee participation in the Travel Charge Card program, and coordinates Travel Management Center services for ACF. It purchases and tracks common use supplies, stationery and publications. It plans and manages reprographic services.

The Office develops and implements policies and procedures for the ACF Personal Property Management program, including managing the ACF Personal Property Inventory, and other personal property activities.

OMR advises the Deputy Assistant Secretary for Administration on organizational analysis and development including: delegations of authority; planning for new organizational elements; and planning, organizing and performing studies, analyses and evaluations related to structural, functional and organizational issues, problems and policies to ensure organizational effectiveness. The Office administers ACF's system for review, approval and documentation of delegations of authority. The Office provides technical assistance and guidance to ACF offices on intra-component organizational proposals and is responsible for development and/or review of inter-component organizational proposals. The Office develops policies and procedures for implementing organizational development activities and provides leadership of assigned ACF special initiatives arising from Departmental, federal and non-federal directives to improve service delivery to customers and to enhance employee work environment. The Office manages and coordinates designated incentive awards programs.

The Office develops training policy and plans for ACF. It provides leadership in directing and managing Agency-wide staff development and training activities for ACF. OMR is responsible for the functional management of all information technology and software training, common needs training, and management training in the agency, including policy development, guidance, technical assistance and evaluation of all aspects of career, employee, supervisory, management and executive training. The Office provides leadership in managing/overseeing and monitoring the ACF Training Resource Center and the Computer Training and Information Centers. The Office develops and manages the consolidated training budget for the Agency.

F. Delete KB.20 Functions, Paragraph G, The Office of Grants Management in its Entirety and Replace With the Following:

G. The Office of Grants Management (OGM) supports the Deputy Assistant Secretary for Administration in fulfilling ACF's Chief Grants Management Officer Responsibilities. The Office serves as the principal office within ACF for ensuring the business and financial responsibilities of grants administration are carried out. OGM provides direct administration and management of ACF discretionary, formula, entitlement and block grants; directs all grants and cooperative agreements awarded by ACF and assures compliance with applicable statutes, regulations, and policies; and performs audit resolutions. The Office provides leadership and technical guidance to ACF program and regional Offices on grant operations and grants management issues; OGM interprets and implements financial policies, regulations, legislation and appropriations law; and secures resolution of legal matters relating to grants administration and management. The Office coordinates with the Office of Financial Services on crosscutting issues.

OGM provides agency-wide leadership and guidance to program officials and staff on grants management related issues, including: Assisting in developing, implementing, and evaluating program plans, strategies, regulations, program announcements, guidelines, and procedures applicable to ACF discretionary, formula, entitlement and block grant programs. The Office provides oversight and direction in the establishment of appropriate State and grantee allocations.

OGM is responsible for directing the receipt and review of all competitive grant applications; developing proposals and/or coordinating management initiatives to improve the efficiency of both the financial administration and awarding of ACF discretionary, formula, entitlement and block grant programs; and developing procedures for monitoring and review of ACF grant programs. The Office serves as the lead for ACF in coordination and liaison with the Department, Regional Offices and other Federal agencies on grants administration and management.

G. Delete KB.20 Functions, Paragraph H, The Equal Employment Opportunity and Civil Rights Staff in its Entirety and Replace With the Following:

H. The Equal Employment Opportunity and Civil Rights Staff (EEOCRS) serves as the principal advisor, through the Deputy Assistant Secretary for Administration, to the Assistant Secretary on all aspects of the Agency's Equal Employment Opportunity and Civil Rights program.

The Staff serves as the liaison between ACF and the HHS Office for Civil Rights. The Staff directs and manages the ACF Equal Employment Opportunity and Civil Rights program in accordance with Equal Employment Opportunity Commission (EEOC) regulations and HHS guidelines. The immediate oversight is provided by a staff under the direction of the ACF EEO

Officer. The Staff plans, develops and evaluates programs and procedures designed to identify and eliminate discrimination in employment, training, incentive awards, promotion and career opportunities. They are responsible for implementing and evaluating a cost-effective, timely and impartial system for processing individual complaints of discrimination under Title VII of the Civil Rights Act of 1964, as amended. The Staff provides information, guidance, advice and technical assistance to ACF supervisors and managers on affirmative employment planning and other means of achieving parity and promoting work force diversity. The Staff is responsible for ensuring that ACF-conducted programs do not discriminate against recipients on the basis of race, color, national origin, age or disability. The Staff monitors and implements civil rights compliance actions under Title VI, Section 504 of the Rehabilitation Act of 1973, as amended and the Age Discrimination Act of 1975, as amended. The Staff implements the applicable provisions of the Americans with Disabilities Act of 1990.

Dated: August 14, 2002.

Wade F. Horn,

Assistant Secretary for Children and Families.

[FR Doc. 02–21465 Filed 8–21–02; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Clinical Research.

Date: August 29, 2002.

Time: 10 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sheryl K. Brining, Ph.D., Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892, 301–435–0809, *brinings@ncrr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: August 13, 2002.

LaVerne Y. Sringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21343 Filed 8–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAID.

Date: December 9–11, 2002.

Time: 8 a.m. to 12:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Building 10, Sheldon M. Wolff Memorial Conference Room 11S235, 10 Center Drive, National Institutes of Health, Bethesda, MD 20892.

Contact Person: Thomas J. Kindt, Ph.D., Director, Division of Intramural Research, National Inst. of Allergy & Infectious Diseases, Building 10, Room 4A31, Bethesda, MD 20892, 301 496–3006, *tk9c@nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21345 Filed 8–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: October 10–11, 2002.

Open: October 10, 2002, 9 a.m. to 11 a.m.

Agenda: Administrative reports and program discussions.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, 2nd Floor Mezzanine, Bethesda, MD 20894.

Closed: October 10, 2002, 11 a.m. to 5 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, 2nd Floor Mezzanine, Bethesda, MD 20894.

Closed: October 11, 2002, 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, 2nd Floor Mezzanine, Bethesda, MD 20894.

Contact Person: Sheldon Kotzin, MLS, Chief, Bibliographic Services Division, Division of Library Operations, National Library of Medicine, Building 38A, Room 4N419, 8600 Rockville Pike, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 02–21344 Filed 8–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine; Board of Scientific Counselors, Lister Hill Center.

Date: September 26–27, 2002.

Open: September 26, 2002, 9 a.m. to 1 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: September 26, 2002, 1 p.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Open: September 26, 2002, 2 p.m. to 5 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Open: September 27, 2002, 9 a.m. to 12 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Jackie Duley, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Bldg 38A, RM 7N–705, Bethesda, MD, 301–496–4441.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21346 Filed 8–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 66 FR 21406, April 30, 2001, and redesignated from Part HN as Part N at 60 FR 56606, November 9, 1995) is amended as set forth below to reflect the transfer of the bacterial toxins and therapeutics research function from the National Institute of Dental and Craniofacial Research to the National Institute of Allergy and Infectious Diseases, National Institutes of Health.

Section N–B, Organization and Functions, under the heading National Institute of Allergy and Infectious Diseases (NM, formerly HNM), Division of Intramural Research (NM2, formerly HNM2), insert the following:

Bacterial Toxins and Therapeutics Section (NM–8, formerly HNM2–8). (1) Studies the actions of bacterial protein toxins on animal cells, using methods of biochemistry, microbiology, genetics, and cell biology; and (2) focuses on pathogenic bacteria, especially Bacillus antracis, to include (a) identification and analysis of bacterial virulence factors and their genetic regulation, (b) structure-function analysis of bacterial toxin proteins and other virulence factors, and (c) development of improved vaccines and therapeutics.

Delegations of Authority Statement: All delegations and redelegations of authority to officers and employees of NIH that were in effect immediately prior to the effective date of this establishment and are consistent with this establishment shall continue in effect, pending further redelegation.

Dated: August 11, 2002.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 02–21347 Filed 8–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Privacy Act of 1974; Proposed New System of Records

AGENCY: National Institutes of Health (NIH), HHS.

ACTION: Notification of proposed new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the National Institutes of Health (NIH) is publishing a notice of a proposal to create a new system of records 09–25–0217, ''NIH Business System (NBS), HHS/NIH.'' The main purposes of the

system include: (1) Tracking of all payments to individuals, exclusive of salaries and wages, based upon prior entry into the NIH accounting system of the official commitment and obligation of government funds, (2) establishment of a receivable record and the tracking of repayment status when a person is to repay funds advanced as a loan or scholarship, etc., (3) establishment of a receivable record for recovery of the amount claimed, in the event of an overpayment to a person, and (4) development of reports of taxable income to the Internal Revenue Service (IRS) and applicable State and local tax offices.

DATES: The NIH invites interested parties to submit comments on the proposed uses on or before September 23, 2002. The NIH will send a Report of the Proposed New System to the Congress and to the Office of Management and Budget (OMB). The proposed new system of records will be effective 40 days from the date submitted to the OMB, unless NIH receives comments that would result in a contrary determination.

ADDRESSES: Please address comments to: NIH Privacy Act Officer, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, Maryland 20892. (301) 496–2832 (This is not a toll-free number).

Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Eric Cole, NBS System Manager, National Institutes of Health, 6707 Democracy Boulevard, Suite 1001, Bethesda, Maryland 20892–5470. 301–451–0043.

SUPPLEMENTARY INFORMATION: Sections 301 and 302 of United States Code (U.S.C.), Title 5, Sections 3101and 3102 of United States Code (U.S.C.), title 44, and Executive Order 9397 (Nov. 22, 1943) authorize the Secretary to implement and establish the use of accounting systems at NIH.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: August 13, 2002.

Charles E. Leasure, Jr.,

Deputy Director for Management, National Institutes of Health.

09–25–0217

SECURITY CLASSIFICATION:

None.

SYSTEM NAME: ADMINISTRATION:

NIH Business System (NBS), HHS/NIH.

SYSTEM LOCATION:

Records are maintained in databases located within the NIH computer facilities and in the files of the NIH functional offices that are required to identify individuals in order to manage the Federal resources and authorities assigned to them. A current list of sites is available by writing the System Manager listed under the Notification Procedure below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The proposed system of records covers all persons who receive a payment exclusive of salary or wages, from the NIH, and all persons owing money to the NIH. Persons receiving payments include, but are not limited to, travelers on official business, grantees, contractors, consultants, Fellows and recipients of loans and scholarships. Persons owing monies include, but are not limited to, persons who have been overpaid and who owe the NIH a refund the persons who have received from NIH goods or services for which there is a charge or fee (*e.g.,* Freedom of Information Act requesters).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN) or EIN/TID, address, email address, phone number, purpose of payment or request for payment, bank account and routing numbers, accounting classification and the amount paid or billed. Also, in the event of an overpayment and for outstanding charges, fees, loans, grants or scholarships, the amount of the indebtedness, the repayment status and the amount to be collected. In the event of an administrative wage garnishment, information about the debtor's employment status and disposable pay available for withholding will be maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 302, 44 U.S.C. 3101 and 3102, Executive Order 9397.

PURPOSE(S):

These records are an integral part of the accounting system at the NIH. The records are used to keep track of all payments to individuals, exclusive of salaries and wages, based upon prior entry into the systems of the official commitment and obligation of government funds. When a person is to repay funds advanced as a loan or scholarship, etc., the records will be used to establish a receivable record and to track repayment status. In the event of an overpayment to a person, the record is used to establish a receivable record for recovery of the amount claimed. The records are also used internally to develop reports for the Internal Revenue Service (IRS) and applicable State and local taxing officials of taxable income.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Records will be routinely disclosed to the Treasury Department in order to effect payment.

2. Records may be disclosed to Members of Congress concerning a Federal financial assistance program in order for members to make informed opinions on programs and/or activities impacting on legislative decisions. Also, disclosure may be made to a Member of Congress or to a Congressional staff member in response to an inquiry from the Congressional office made at the written request of the individual.

3. Disclosure may be made to the Department of Justice for the purpose of obtaining its advice regarding whether particular records are required to be disclosed under the Freedom of Information Act.

4. A record from this system may be disclosed to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to its decision on the matter.

5. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service (IRS) or the Civil Rights Commission, issue a subpoena to the NIH for records in this system of records, the NIH will make such records available, provided however, that in each case, the NIH determines that such disclosure is compatible with the purpose for which the records were collected.

6. Where a contract between a component of HHS and a labor organization recognized under E.O. 11491 provides that the agency will disclose personal records relevant to the organization's mission, records in the system of records may be disclosed to such an organization.

7. A record may be disclosed to the Department of Justice, to a court, or other tribunal, or to another party before such tribunal, when: (1) HHS, or any component thereof; (2) any HHS employee in his or her official capacity; (3) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (4) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to the litigation or has an interest in the litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the government party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

8. A record about a loan applicant or potential contractor or grantee may be disclosed from the system of records to credit reporting agencies to obtain a credit report in order to assess and verify the person's ability to repay debts owed to the Federal Government.

9. When a person applies for a loan under a loan program as to which the OMB has made a determination under I.R.C. 6103(a)(3), a record about his or her application may be disclosed to the Treasury Department to find out whether he or she has a delinquent tax account, for the sole purpose of determining the person's creditworthiness.

10. A record from this system may be disclosed to the following entities in order to help collect a debt owed the United States:

a. To another Federal agency so that agency can effect a salary offset;

b. To the Treasury Department or another Federal agency in order to effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to, or held on behalf of, the individual);

c. To the Treasury Department to request the person's mailing address under I.R.C. 6103(m)(2) in order to help locate the person or to have a credit report prepared;

d. To agents of HHS and to other third parties, including credit reporting agencies, to help locate the person or to obtain a credit report on him or her, in order to help collect or compromise a debt;

e. To debt collection agents or contractors under 31 U.S.C. 3718 or under common law to help collect a past due amount or locate or recover a debtors' assets;

f. To the Justice Department for litigation or for further administrative action; and

g. To the public, as provided by 31 U.S.C. 3720E, in order to publish or otherwise publicly disseminate information regarding the identity of the person and the existence of a non-tax debt. Disclosure under parts (d) and (g) is limited to the individual's name, address, social security number, and other information necessary to identify the person. Disclosure under parts (a)–(c) and (e) is limited to those items; the amount, status, and history of the claim; and the agency or program under which the claim arose. An address obtained from the IRS may be disclosed to a credit reporting agency under part (d) only for the purpose of preparing a credit report on the individual.

11. A record from this system may be disclosed to another Federal agency that has asked HHS to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States. Disclosure is limited to name and address, Social Security number, and other information necessary to identify the individual; information about the money payable to or held for the individual; and other information concerning the administrative offset.

12. Disclosure with regard to claims or debts arising under or payable under the Social Security Act may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) of the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal Government. Disclosure is limited to the individual's name, address, Social Security number, and other information necessary to establish the individual's identity; the amount, status and history of the claim; and the agency or program under which the claim arose.

13. Information in this system of records is used to prepare W–2s and 1099 Forms to submit to the Internal Revenue Service and to applicable State and local governments. Items considered to be included as income to a person: certain travel related payments to employees, all payments made to persons not treated as employees (*e.g.,* fees to consultants and experts), and amounts written-off as legally or administratively uncollectible, in whole or in part.

14. A record may be disclosed to banks enrolled in the Treasury Credit Card Network to collect a payment or debt when the person has given his or her credit card number for this purpose.

15. Records may be disclosed to a contractor (and/or to its subcontractor) who has been engaged to perform services on an automated data processing (ADP) system used in processing financial transactions. The contractor may have been engaged to develop, modify and test a new ADP system, including both software and hardware upgrades or enhancements to such a system; perform periodic or major maintenance on an existing ADP system; audit or otherwise evaluate the performance of such an ADP system; and/or operate such a system.

16. Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for the NIH but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

17. A record from this system may be disclosed to any Federal agency or its agents in order to participate in a computer matching of a list of debtors against a list of Federal employees. Disclosure of records is limited to debtors' names, names of employers, taxpayers' identifying numbers, address (including addresses of employers), dates of birth, and other information necessary to establish the person's identity.

18. A record of a person responsible for a current claim may be disclosed to a commercial reporting agency in order to aid in the collection of claims, typically by providing an incentive to the person to repay the claim or a debt timely. Disclosure of records is limited to information about a person that is relevant and necessary to meet the principal purpose(s) for which it is intended to be used under the law.

19. A record from this system may be disclosed to the Treasury Department or to an agency operating a Debt Collection Center designated by the Treasury in order to effect a collection of past due amounts.

20. If HHS decides to sell a debt pursuant to 31 U.S.C. 3711(I), a record from the system may be disclosed to purchasers, potential purchasers, and contractors engaged to assist in the sale or to obtain information necessary for potential purchasers to formulate bids and information necessary for purchasers to pursue collection remedies.

21. If HHS decides to administratively garnish wages of a delinquent debtor

under the wage garnishment provision in 31 U.S.C. 3720D, a record from the system may be disclosed to the debtor's employer. This disclosure will take the form of a wage garnishment order directing that the employer pay a portion of the employee/debtor's wages to the Federal Government. Disclosure of records is limited to the debtor's name, address, and social security number.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): Disclosure may be made from this system to ''consumer reporting agencies,'' as defined in 31 U.S.C. 3701(a)(3). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal Government, by providing an incentive for debtors to repay these debts by making them part of the debtor's credit records. Disclosure of records is limited to the individual's name, address, social security number, and other information necessary to establish the individual's identity; the amount, status and history of the claim; and the agency or program under which the claim arose. The disclosure will be made only after the procedural requirements of 31 U.S.C. 3711(e) have been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on computer discs and tapes. Automated records are stored in controlled access areas. Hard copy documents and automated records will both be maintained in accordance with Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records'', and the HHS Automated Information System Security Program Handbook.

RETRIEVABILITY:

Records are retrieved by name, accounting classification, social security number, voucher number or other identifying numbers or characteristics.

SAFEGUARDS:

The NBS will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to the Privacy Act of 1974, Computer Security Act of 1987, Paperwork Reduction Act of 1995, Clinger-Cohen Act of 1996, and the Office of Management and Budget (OMB) Circular A–130, Appendix III, ''Security of Federal Automated Information Resources.''

Paragraphs A–C of this section highlight some of the specific methods that NIH is using to ensure the security of this system and the information within it.

A. *Authorized Users:* Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees (as part of the user authentication process) to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. To insure security of the data, each individual user's privilege level is managed via authentication and role-based authorizations that ensure minimum and necessary access. This prevents unauthorized users from accessing and modifying critical data.

B. *Physical Safeguards:* All server sites have implemented the following minimum requirements. Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to automated information system resources caused by fire, electricity, water and inadequate climate controls.

C. *Procedural Safeguards:* All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data and the risk and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records.''

SYSTEM MANAGER(S) AND ADDRESSES:

Eric Cole, NBS System Manager, 6707 Democracy Boulevard, Suite 1001, MSC 5470, Bethesda, MD 20892.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager listed above. A written request must contain the name, address and social security number of the requestor and his or her signature that either is notarized to verify his or her identify or contain a written certification that the requestor is who he or she claims to be and understands that the knowing an willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above, identify the record, and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

All persons who receive a payment other than salary or wages, from the NIH or owe money to the NIH; officials performing services on behalf of HHS; other Federal agencies; consumer reporting agencies/credit bureaus; travel vouchers submitted by individuals to the NIH; grant, contract or loan award documents; delinquent loan, grant or scholarship records; invoices of services rendered to the NIH; applications for a travel advance submitted to the NIH; NIH Human Resource Database (HRDB); NIH electronic Directory (NEDS); and employers of debtors subject to administrative wage garnishment.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–21348 Filed 8–21–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for Prevention/Early Intervention Services.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) announces the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, *Cooperative Agreement for Prevention/ Early Intervention Services (SM 03–004), and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements,* before preparing and submitting an application.

Activity deadline	Application	Est. funds, FY 2003 (millions)	Est. Number of awards	Project period
Cooperative Agreement for Prevention/Early Intervention Services	10–22–2002	$1.0	2–3	3 years.

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of a reasonable number of applications being hereby solicited. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund any applications. This program is authorized under Section 520A of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Mental Health Services Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, DC 20015. Telephone: 1–800–789–2647.

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov,* (Click on ''Grant Opportunities'').

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose

The Substance Abuse and Mental Health Services Administration (SAMHSA),Center for Mental Health Services (CMHS) is accepting applications for fiscal year (FY) 2003 cooperative agreements to develop and implement the Prevention/Early Intervention Services Program. The goal of the Prevention/Early Intervention Services Program is to develop prevention and intervention mental health services and programs at the community level for children, adolescents and their families. The purpose of this initiative is to increase the capacity of cities, counties, and tribal governments to provide prevention and early intervention treatment services to meet emerging and urgent mental health needs of communities. The program will help communities to build the service system infrastructure necessary to address serious local or regional mental health problems through prevention and early treatment interventions having a strong evidence base.

Eligibility

Eligibility to apply for Prevention/ Early Intervention awards will be limited to cities, counties, and tribal governments and their agencies. Eligibility is restricted to local government because the purpose of the program is to add needed mental health services at the local level, and as such these services are the responsibility of the local government.

Availability of Funds

Approximately $1 million is expected to be available for FY 2003. Approximately two to three awards will be made in total costs (direct and indirect) that range from $300,000 to $400,000 per year. The total funds available and actual funding levels will depend on the receipt of an appropriation. Annual continuation of the award depends on the availability of funds and progress achieved.

Period of Support

Awards may be requested for a project period of up to 3 years.

Criteria for Review and Funding

General Review Criteria

Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/ SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number

93.243.

Program Contact

For questions concerning program issues, contact: Gail F. Ritchie, M.S.W., Special Programs Development Branch, Division of Program Development, Special Population, and Projects, CMHS/SAMHSA, 5600 Fishers Lane, Room 17C–05, Rockville, MD 20857. (301) 443–1752. E-mail: *gritchie@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–9666. E-Mail: *gsimpson@samhsa.gov.*

Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372

Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's website under ''Assistance with Grant Applications''. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: August 15, 2002.

Joseph H. Autry III,

Deputy Administrator.

[FR Doc. 02–21342 Filed 8–21–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for cooperative agreements for State Emergency Response Capacity.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS), Center for Substance Abuse Treatment (CSAT), and Center for Substance Abuse Prevention (CSAP) announce the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, *Cooperative Agreements for State Emergency Response Capacity (SM 03–001)*, and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements,* before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2003 (millions)	Est. number of awards	Project Period
Cooperative Agreement for State Emergency Response Capacity	10–22–2002	$4.0	40	2 years.

The actual amount available for the award may vary, depending on the unanticipated program requirements and the number and quality of applications received. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of a reasonable number of applications being hereby solicited. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices.

All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund any applications. This program is authorized under Section 520A, Section 509, and Section 516 of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: The Center for Mental Health Services (CMHS), Knowledge Exchange Network (KEN), Telephone: 1–800–789–2647.

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov,* (Click on ''Grant Opportunities'').

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), Center for Substance Abuse Treatment (CSAT), and Center for Substance Abuse Prevention (CSAP) are accepting applications for fiscal year (FY) 2003 cooperative agreements to develop and implement the State Emergency Response Capacity. The goal of the State Emergency Response Capacity Program is to enhance State-level capacity for a coordinated response to mental health and substance abuse service needs in the aftermath of large scale emergencies (both natural and human caused). Incident response plans and response infrastructure developed under the grant must include both mental health and substance abuse agencies and must focus on coordinated mental health and substance abuse emergency planning and capacity development activities.

Eligibility

All 50 States, Indian Tribes, and consortia of Indian tribes, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands may apply. State mental health and substance abuse authorities must apply in partnership. In States, territories, or tribal governments with administratively separate mental health and substance abuse authorities, a lead agency must be designated for grant purposes. SAMHSA has limited eligibility to States, and Indian tribes because these governmental units have a mandated oversight role in mental health, substance abuse, and emergency management activities.

Availability of Funds

Approximately $4 million is expected to be available for FY 2003. Approximately 40 awards will be made in total costs (direct and indirect) of up to $100,000 per year. The total funds available and actual funding levels will depend on the receipt of an appropriation. Annual continuation of the award depends on the availability of funds and progress achieved.

Period of Support

An award may be requested for a project period of up to 2 years.

Criteria for Review and Funding

General Review Criteria

Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number

93.243.

Program Contact

For questions concerning program issues, contact: Seth Hassett, M.S.W., Public Health Advisor, 5600 Fishers Lane, Room 17C–20, Rockville, MD 20857. (301) 443–4735. E-Mail: *shassett@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Grants Management Officer, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 13–603, Rockville, MD 20857. (301) 443–9666. E-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372

Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's Web site under ''Assistance with Grant Applications''. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: August 15, 2002.

Joseph H. Autry III,

Deputy Administrator, SAMHSA.

[FR Doc. 02–21358 Filed 8–21–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–35]

Notice of Submission of Proposed Information to OMB; Single Family Mortgage Insurance on Indian Reservations and Other Restricted Lands

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:* September 23, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0340) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may 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 number 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: Single Family Mortgage Insurance on Indian Reservations and Other Restricted Lands.

OMB Approval Number: 2502–0340.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Insured single family mortgages on reservation lands must meet regulatory requirements to provide eviction procedures, first liens, and an appeal process.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	X	Annual responses	X	Hours per response	=	Burden hours
Reporting Burden	1,220		1		0.5		610

Total Estimated Burden Hours: 610.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 15, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–21398 Filed 8–21–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Primary Series Quadrangles; Price Increase

ACTION: Notice of USGS price increase for 1:24,000-scale, 1:25,000-scale and 1:63,360-scale primary series quadrangles.

SUMMARY: The U.S. Geological Survey will increase prices for their 1:24,000-scale, 1:25,000-scale and 1:63,360-scale primary series quadrangles from $4.00 to $6.00 per quadrangle.

Prices for these products were last revised nearly 7 years ago and will be adjusted to accurately reflect and ensure recovery of the costs associated with their reproduction and distribution. These changes are consistent with guidance contained in the Office of

Management and Budget (OMB) Circular A–130, concerning management of Federal information resources (Revised Nov. 2000), Circular A–25, establishing Federal policy regarding fees assessed for Government services, which permits government agencies to recover reproduction and distribution costs from the sale of their products.

DATES: The price will increase to $6.00 per quadrangle effective September 1, 2002. All map orders received by or postmarked before September 1, 2002, will be subject to the current price of $4.00 per quadrangle. On August 19, 2002, the U.S. Geological Survey Business Partners will receive a 2-week advance notification of the impending price increase.

FOR FURTHER INFORMATION CONTACT: James Brokaw, Geographic Information Office, (303) 236–5435 or by e-mail at *jbrokaw@usgs.gov.*

Dated: August 13, 2002.

Karen Siderelis,

Geographic Information Officer.

[FR Doc. 02–21404 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–EU; IDI 8104, IDI 8105, IDI 8175, IDI 8934]

Termination of Desert Land Entry and Carey Act Classifications

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Desert Land Entry and Carey Act Classifications on 1173.93 acres of land in Elmore County as these classifications are no longer needed.

EFFECTIVE DATE: August 22, 2002.

FOR FURTHER INFORMATION CONTACT: Catherine D. Foster, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3863.

SUPPLEMENTARY INFORMATION: On February 14, 1983, the lands listed below were classified as either suitable or unsuitable for entry under the authority of the Desert Land Act of March 3, 1877, as amended and supplemented (43 U.S.C. 321, *et seq.*) and the Carey Act of August 18, 1894, as amended (43 U.S.C. 641 *et seq.*). The classifications on the following described lands are hereby terminated:

Serial No.	Classification	Township	Range	Section	Subdivision
IDI 8104	Suitable	5 S	10 E	33	S½SE¼, NW¼SE¼.
	Non-Suitable	5 S	10 E	32	Lot 8, S½SE¼.
				33	S½SW¼.
IDI 8105	Suitable	5 S	10 E	33	NE¼SE¼, NW¼SW¼.
	Non-Suitable			34	S½SW¼.
		6 S	10 E	3	Lots 3 & 4.
				5	Lot 1.
IDI 8175	Suitable	6 S	12 E	18	Lots 13–17.
				19	Lots 6 & 7.
	Non-Suitable	6 S	12 E	18	Lot 12.
IDI 8934	Suitable	6 S	11 E	13	SW¼.
				14	SE¼SE¼.
		6 S	12 E	18	Lots 6–8.

At 9 a.m. on August 22, 2002, the Desert Land Entry and Carey Act classifications identified above will be terminated. No opening order is required as these lands will remain open since they were never segregated from the operation of the public land laws, including the mining laws and mineral leasing laws.

Dated: May 29, 2002.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 02–21390 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–1430–ER; A–059905]

Public Land Closure; Prohibition of Certain Activities; AK

AGENCY: Anchorage Field Office, Bureau of Land Management, DOI.

ACTION: Notice to the public of temporary public lands closure and prohibition of certain activities on public lands administered by the Anchorage Field Office, Bureau of Land Management, Alaska; withdrawal of Supplementary Rule.

SUMMARY: This notice closes certain public lands in Alaska administered by the Bureau of Land Management (BLM) to the use of fireworks and to the use of firearms for purposes other than licensed hunting. It also prohibits the use of lead shot for hunting. This closure notice is necessary for the management of actions, activities, and use on public lands which may have, or are having, adverse impacts on persons using public lands, on property, and on resources located on public lands. The subject lands are utilized for a public boat launch, lawful hunting and boating, and are adjacent to the heavily traveled Glenn Highway.

This notice also withdraws a previously published notice of Supplementary Rules on the same subject matter.

EFFECTIVE DATE: This closure notice is effective August 22, 2002 and will remain in effect until such lands are conveyed to the State of Alaska.

ADDRESSES: A map showing this closure and prohibitions is available from the following BLM office: BLM–Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599.

The map may also be viewed on the Field Office Web site at: *http://www.anchorage.ak.blm.gov/knikclose.html*

FOR FURTHER INFORMATION CONTACT: Peter J. Ditton, Anchorage Field Manager, 907–267–1246.

SUPPLEMENTARY INFORMATION:

Background

While hunters, boaters, and other recreationists can schedule their use around published hunting seasons for safety reasons, they are not able to avoid random shooting, or ''plinking,'' at makeshift targets such as bottles, cans, or natural objects. Motorists on the Glenn Highway are not able to schedule their highway travel to avoid such shooting. Local conditions such as heavy brush can reduce visibility and increase the hazard to other

recreationists and motorists from shooting.

Recent incidents involving random target shooting have endangered other users of this area, as well as motorists on the adjacent Glenn Highway. The discharge of fireworks increases the risk of wildfires. In addition, resource damage is occurring from the accumulation of debris and lead contamination. To reduce the incidence of future conflicts and enhance public safety, this area of public land known as the Knik River Access or Gravel Pit Lake, located north of Anchorage, Alaska, is being closed to the discharge of fireworks and discharge of firearms. This area will remain open to lawful hunting by licensed hunters during seasons administered by the Alaska Department of Fish and Game. Shotgun use will be limited to ammunition containing steel or other non-lead shot.

Lands Affected

The affected lands are public lands administered by the Bureau Land Management, Anchorage Field Office, and are described as follows:

T. 16 N., R. 1 E., Seward Meridian, Alaska

Sec. 10: Lot 6, West of the Alaska Railroad
Sec. 15: Lot 6

This closure notice does not apply to other lands, specifically State or Federal lands, including State lands in the Palmer Hay Flats State Wildlife Refuge.

Withdrawal of Supplementary Rules

The Supplementary Rules published on May 17, 2002 (67 FR 35133), are hereby withdrawn.

Closure Order

1. *Authority:* 43 CFR 8364.1.

2. *Closure:* The following described lands are closed to discharge of fireworks and to the discharge of firearms except by licensed hunters during seasons designated and administered by the Alaska Department of Fish and Game:

T. 16 N., R. 1 E., Seward Meridian, Alaska

Sec. 10: Lot 6, West of the Alaska Railroad
Sec. 15: Lot 6

3. *Prohibited Acts:* The following acts are prohibited in the closed areas:

a. The discharge of fireworks.

b. The discharge of firearms except by licensed hunters during seasons administered by the Alaska Department of Fish and Game.

c. The use of shotgun ammunition containing lead shot.

4. *Penalties:* Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), if you knowingly and willfully violate or fail to comply with any of the prohibited acts provided in this closure notice, you may be subject to a fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733.

Dated: August 16, 2002.

June Bailey,

Associate Field Manager.

[FR Doc. 02–21401 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–1020–PG]

Notice of Public Meeting, Central Montana Resource Advisory Council

AGENCY: Bureau of Land Management, 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) Central Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held October 2 & 3, 2002, at the Chinook Motor Inn, in Chinook, MT. The October 2 meeting will begin at 1 p.m. with a 30-minute public comment period and will adjourn at approximately 4:30 p.m. The October 3 meeting will begin at 8 a.m.; will provide a public comment period at 1 p.m.; and will adjourn at approximately 3:30 p.m.

SUPPLEMENTARY INFORMATION: The Central Montana Resource Advisory 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 north central Montana. During this meeting the topics to be discussed include:

—An update concerning the scoping open houses for the monument resource management plan;
—a fee system discussion concerning the Upper Missouri National Wild and Scenic River;
—information about easements;
—a summary concerning the North Blaine County Oil and Gas Update;
—information about sage grouse management;
—recommendations from the RAC's Missouri River Visitor Use subgroup;
—reports from field managers;
—reports concerning recent RAC field tours;
—a discussion of visitor use figures for the 2002 float season on the Upper Missouri; and
—a discussion of BLM's Lewis & Clark liaison efforts with Native American tribes.

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.

FOR FURTHER INFORMATION CONTACT: Bruce W. Reed, Field Manager, Malta Field Office, 501 S. 2nd Street East, Malta, MT, 59538, (406) 654–1240.

David L. Mari,

Field Manager.

[FR Doc. 02–21219 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–070–02–1430–ES; AZA 31566]

Arizona: Notice of Realty Action; Lease and Conveyance of Public Lands in Mohave County, Lake Havasu City, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification of public land for recreation and public purposes lease and conveyance.

SUMMARY: The following described public land in Mohave County, Arizona, has been examined and found suitable for classification in accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and Executive Order No. 6910, as suitable for lease and disposal under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*):

Gila and Salt River Meridian, Arizona

T. 13 N., R. 19 W.,
sec. 20, NW¼SE¼,
Containing 40 acres, more or less.

SUPPLEMENTARY INFORMATION: Lake Havasu City (LHC) has filed an R&PP application requesting the described land to be made available to meet recreational and public purposes of the community. The LHC proposes to use the land for development of sports fields for public soccer, football, playground,

picnic areas, dog park, a trail, and for other related recreational events. Lease and conveyance of the land for recreational and public purposes would be in the public interest and is consistent with the Yuma Resource Management Plan, 1985, which identifies the land as potentially suitable for disposal. The land is not required for any Federal purposes.

Lease and conveyance (patent) when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals, together with the right to prospect for, mine and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior.

And will be subject to:

1. The provisions of the R&PP Act and all applicable regulations of the Secretary of the Interior.

Segregation

Upon publication of this Notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease and conveyance under the R&PP Act, leasing under the mineral leasing laws, and mineral material disposal laws.

Classification Comments

Interested parties may submit comments involving the suitability of the land for sports fields for public soccer, football, playground, picnic areas, dog park, and trail. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the Bureau of Land Management followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for sports fields for public soccer, football, playground, picnic areas, dog park, and trail.

DATES: For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406. Any adverse comments will be reviewed by the Arizona State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication of this Notice in the **Federal Register**. The land will not be offered for lease and conveyance until after the classification becomes effective.

Comments, including names and street addresses of respondents, will be available for public review at the address below during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Realty Specialist Maria Rosalez, Bureau of Land Management, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406 or telephone (928) 505–1227.

Dated: June 27, 2002.

Donald Ellsworth,

Field Manager.

[FR Doc. 02–21394 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–032–0–1430–EU]

Realty Action: Recreation and Public Purpose Act Classification; Mason County, MI

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Recreation and Public Purposes Act (R&PP) classification; Michigan.

SUMMARY: The following public lands near the community of Ludington in Mason County, Michigan have been examined and found suitable for classification for lease or conveyance to the State of Michigan, Department of Natural Resources (DNR), under the provisions of the Recreation and Public Purposes (R&PP) Act of 1926, as amended (43 U.S.C. 869 *et seq.*). Therefore, in accordance with Section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f) and EO 6964, the following described lands are hereby classified as suitable for disposal under the provisions of the R&PP Act of 1926, as amended (43 U.S.C. 869 *et seq.*) and, accordingly, opened for only that purpose.

Michigan Meridian

T. 19 N., R. 18 W.,
S ½ Lot 1 and Lot 2, Section 7

The above lands aggregate 57.5 acres in Mason County, Michigan.

This action classifies the lands identified above for disposal through the R&PP Act to protect the historic lighthouse and the surrounding lands. The subject land was identified in the Michigan Resource Management Plan Amendment, approved June 30, 1997, as not needed for Federal purposes and having potential for disposal to protect the historic structures and surrounding lands. Lease or conveyance of the land for recreational and public purpose use would be in the public interest. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Milwaukee Field Office, Wisconsin.

The Michigan DNR has applied for patent to the land under the R&PP Act, as an addition to Ludington State Park.

FOR FURTHER INFORMATION CONTACT: Paul J. Salvatore, Realty Specialist, Bureau of Land Management, Milwaukee Field Office, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin 53203, (414) 297–4413.

SUPPLEMENTARY INFORMATION: Pursuant to an Executive Order dated October 16, 1866, public land in Mason County, Michigan was reserved for lighthouse purposes. The Big Sable Lighthouse is located within this parcel on the eastern shore of Lake Michigan near the city of Ludington.

On May 22, 1926, through an Act of Congress, the Secretary of Commerce was authorized to dispose of that portion of the Big Sable lighthouse reservation no longer needed for lighthouse purposes to Mason County, Michigan for public park purposes. The portion of the reservation to be conveyed was described as section 6, lots 1 through 4; section 7, E½, lots 1 through 3; section 18, NE¼, W½ SE¼ and lot 1; T. 19 N., R. 18 W., Michigan Meridian and comprised 799.62 acres.

The remaining land described as S½ Lot 1 and Lot 2, section 7, T. 19 N., R. 18 W., Michigan Meridian, continued to

be reserved by the 1866 Executive Order after 1926. The Department of Transportation, United States Coast Guard has submitted a Notice of Intent (NOI) to relinquish custody, accountability and control of the remaining 57.5 acres. The Bureau of Land Management has recommended that the remaining lands be determined suitable for return to their former status as public lands, such determination to be made by the Secretary of the Interior and accomplished by the issuance of a public land order revoking the Executive Order as to the remaining lands. A proposed public land order for this purpose currently is pending and awaiting action within the Department.

The State of Michigan Department of Natural Resources has applied for patent to the land under the R&PP Act of 1926, as an addition to Ludington State Park.

The lease/patent when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act of 1926, as amended, and to all applicable regulations of the Secretary of the Interior.

2. Valid existing rights.

3. All minerals are reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Terms and conditions identified through the site specific environmental analysis.

5. Any other rights or reservations that the authorized officer deems appropriate to ensure public access and proper management of Federal lands and interest therein.

Upon publication of this Notice in the **Federal Register**, the above described lands will be segregated from all forms of disposal or appropriation under the public land laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days after issuance of this notice, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Field Manager, Milwaukee Field Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin 53203.

Classification Comments

Interested parties may submit comments involving the suitability of the land for R&PP Act classification, and particularly, whether the land is physically suited for inclusion in the state park, whether the use will maximize future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application, the development plan, the management plan, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for inclusion in the state park.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: August 1, 2002.

James W. Dryden,

Milwaukee Field Manager.

[FR Doc. 02–21391 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–PN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–032–2–1430–EU]

Realty Action: Recreation and Public Purpose Act Classification; Huron County, MI

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Recreation and Public Purposes Act (R&PP) Classification; Michigan.

SUMMARY: The following public lands near the community of Port Hope in Huron County, Michigan have been examined and found suitable for classification for lease or conveyance to the Huron County Road Commission, County Parks Department, under the provisions of the Recreation and Public Purposes (R&PP) Act of 1926, as amended (43 U.S.C. 869 *et seq.*). Therefore, in accordance with Section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f) and EO 6964, the following described lands are hereby classified as suitable for disposal under the provisions of the R&PP Act of 1926, as amended (43 U.S.C. 869 *et seq.*) and, accordingly, opened for only that purpose.

Michigan Meridian

T. 18 N., R. 14 E.,
Pointe Aux Barques Lighthouse Reservation, located in lot 2, sec. 2, being more particularly described as:
Beginning at the ¼ section corner of secs. 2 and 11, T. 18 N., R. 14 E., Thence,
N. 34° 11′ E., 29.39 chs., to Angle Point No. 1, the place of beginning,
N. 50° 10′ E., 0.50 chs., to a point on line,
N. 50° 10′ E., 4.21 chs., to Angle Point No. 2,
S. 89° 31′ E., 1.14 chs., to a point on line,
S. 89° 31′ E., 0.46 chs., to Angle Point No. 3 on the present shoreline of Lake Huron,
Thence, with the meanders of Lake Huron,
N. 35° 48′ W., 0.62 chs.,
N. 3° 51′ E., 1.24 chs.,
N. 54° 52′ W., 1.59 chs., to Angle Point No. 4,
S. 0° 29′ W., 0.52 chs., to a point on line,
S. 0° 29′ W., 1.63 chs., to Angle point No. 5,
S. 50° 11′ W., 4.54 chs., to a point on line,
S. 50° 11′ W., 0.50 chs., to Angle Point No. 6,
S. 39° 50′ E., 0.38 chs., to Angle Point No. 1, the place of beginning.

The area described contains 0.47 acre in Huron County.

Huron County proposes to integrate the lands into the existing Lighthouse County Park. This action classifies the lands identified above for disposal through the Recreation and Public Purposes Act of 1926 (43 U.S.C. 869 *et seq.*) to protect the historic lighthouse and the surrounding lands. The subject land was identified in the Michigan Resource Management Plan Amendment, approved June 30, 1997, as not needed for Federal purposes and having potential for disposal to protect the historic structures and surrounding lands. Lease or conveyance of the land for recreational and public purpose use would be in the public interest. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Milwaukee Field Office, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Paul J. Salvatore, Realty Specialist, Bureau of Land Management, Milwaukee Field Office, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin 53203, (414) 297–4413.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order dated May 24, 1857, a parcel of public land totaling 87.1 acres located in Huron County, Michigan, described as Lots 1 and 2, Section 2, Township 18 North, Range 14 East, Michigan Meridian, was reserved for lighthouse purposes. The parcel contains the Pointe Aux Barques Lighthouse and is located on the western shore of Lake Huron near the cities of Port Hope and Huron City, Michigan.

On May 28, 1935, through an Act of Congress, the Secretary of Commerce was authorized to dispose of certain lighthouse reservations. Section 16 of

that Act authorized the Secretary of Commerce to convey that portion of the Pointe Aux Barques lighthouse reservation no longer needed for lighthouse purposes to Huron County, Michigan for public park purposes. The Secretary of Commerce conveyed these lands, approximately 56.6 acres, through a Deed dated August 10, 1935.

Through a Quit Claim Deed dated March 18, 1958, the General Services Administration transferred 29.9 acres of the remaining lands of the lighthouse reservation to Huron County for park and recreation purposes. This left 0.47 acres, more or less, of the original lighthouse reservation of 87.1 acres.

The Department of Transportation, United States Coast Guard, submitted a Notice of Intent (NOI) to relinquish custody, accountability and control of the remaining 0.47 acres, more or less. The Bureau of Land Management has recommended that the remaining lands be determined suitable for return to their former status as public lands, such determination to be made by the Secretary of the Interior and accomplished by the issuance of a public land order revoking the Executive Order as to the remaining lands. A proposed public land order for this purpose currently is pending and awaiting action within the Department.

The Huron County Road Commission, County Parks Department, has applied for patent to the land under the R&PP Act of 1926, as an addition to Lighthouse County Park.

The lease/patent when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act of 1926, as amended and to all applicable regulations of the Secretary of the Interior.

2. Valid existing rights.

3. All minerals are reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Terms and conditions identified through the site specific environmental analysis.

5. Any other rights or reservations that the authorized officer deems appropriate to ensure public access and proper management of Federal lands and interest therein.

Upon publication of this Notice in the **Federal Register**, the above described lands will be segregated from all forms of disposal or appropriation under the public land laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days after issuance of this notice, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Field Manager, Milwaukee Field Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin 53203.

Classification Comments

Interested parties may submit comments involving the suitability of the land for R&PP Act classification, and particularly, whether the land is physically suited for inclusion in the county park, whether the use will maximize future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application, the development plan, the management plan, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for inclusion in the county park.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this Notice in the **Federal Register**.

Dated: August 1, 2002.

James W. Dryden,

Milwaukee Field Manager.

[FR Doc. 02–21392 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–PN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EU; N–74957]

Esmeralda County, Nevada; Notice of Realty Action: Segregation Terminated, Sale of Public Land in Esmeralda County, Nevada, by Non-Competitive Sale Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Segregation terminated, non-competitive sale of public lands in Esmeralda County, Nevada.

SUMMARY: The following described lands near Dyer, Esmeralda County, Nevada, was segregated for exchange purposes on May 3, 2002 under serial number N–74957. The exchange segregation on the subject land will be terminated upon publication of this notice in the **Federal Register**. The segregation for exchange purposes is being terminated in order to allow for a sale. The lands have been examined and found suitable for disposal by direct sale, at the appraised fair market value, to John Mauer of Dyer, Nevada. Authority for the sale is in Sections 203 and 209 of the Federal Land Policy and Management Act of October 21,1976 (43 U.S.C. 1701,1713, 1719).

Mount Diablo Meridian, Nevada

T. 4 S., R. 36 E.,
Sec. 23, SE¼NW¼, NE¼SW¼;
Totaling 80.0 acres more or less.

The above-described lands are hereby classified for disposal in accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, Act of June 28, 1934, as amended and Executive Order 6910.

DATES: Comments must be submitted within 45 days of the date this Notice is published in the **Federal Register**.

ADDRESSES: Bureau of Land Management, Tonopah Field Station, 1553 South Main Street, Post Office Box 911, Tonopah, Nevada 89049.

FOR FURTHER INFORMATION CONTACT: Wendy Barlow, Realty Specialist, at the above address or at (775) 482–7806.

SUPPLEMENTARY INFORMATION: This parcel of land near Dyer, Nevada, is being offered by direct sale to John Mauer. The land is not required for Federal purposes. The proposed action is consistent with the objectives, goals, and decisions of the Tonopah Resource Management Plan.

Conveyance of the available mineral interests will occur simultaneously with the sale of the land. Acceptance of the sale offer will constitute an application for the available minerals and the purchaser will be charged a $50.00 nonrefundable filing fee for the mineral interests.

The proponent will have 30 days from the date of receiving the sale offer to accept the offer and to submit a deposit of 30 percent of the purchase price, the $50 mineral filing fee, and money for publication costs. The purchaser must submit the rest of the purchase price, within 90 days from the date the sale offer is received. Payments may be by certified check, postal money order, bank draft, or cashier's check made payable to the U. S. Department of the Interior—BLM. Failure to meet conditions established for this sale will void the sale and any money received for the sale will be forfeited.

The patent, when issued, will contain a reservation to the United States for a right-of-way for ditches and canals

constructed by the authority of the United States under the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945, and will be subject to:

1. Esmeralda County RS 2477 assertion, for a road having a varied width;

2. Oil, gas, and Geothermal Resources; and

3. Valid Existing rights.

Publication of this Notice in the **Federal Register** segregates the subject lands from all appropriations under the public land laws, except sale under the Federal Land Policy and Management Act of 1976. The segregation will terminate upon issuance of the patent or 270 days from date of publication, which ever occurs first.

For a period of 45 days from the date this Notice is published in the **Federal Register**, interested parties may submit comments to the Tonopah Field Station Manager at the above address. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections this realty action will become the final determination of the Department of the Interior. The land will not be offered for sale until at least sixty days after the date this notice was published in the **Federal Register**.

Dated: June 27, 2002.

Jack L. Hamby,

Acting Assistant Field Manager, Tonopah.

[FR Doc. 02–21389 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EU; N–75920, N–75921, N–75922, N–75923, N–75924, N–75925, N–75926]

Notice of Realty Action: Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive sale of public lands in White Pine County, Nevada.

SUMMARY: The below listed public lands in White Pine County, Nevada have been examined and found suitable for disposal, at not less than fair market value. In accordance with Section 7 of the Act of June 28, 1934, as amended, 43 U.S.C. 315f and EO 6910, the described lands are hereby classified as suitable for disposal under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713, and 1719), and the Federal Land Transaction Facilitation Act of July 25, 2000 (Pub. L. 106–248).

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Assistant Field Manager, Nonrenewable Resources.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Jeffrey A. Weeks, Assistant Field Manager, Nonrenewable Resources, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale, including the reservations, sale procedures and conditions, planning and environmental documents, will be available at the Ely Field Office of the Bureau of Land Management, 702 North Industrial Way, Ely, Nevada 89301, or by contacting Gianna Vaccaro, Realty Specialist, at the above address or telephone (775) 289–1885.

SUPPLEMENTARY INFORMATION: The following described parcels of land, situated in White Pine County are being offered as a competitive sale.

Mount Diablo Meridian, Nevada

Parcel 1, casefile N–75923 located at:
T. 10 N., R. 62 E.,
Section 5, SW¼NE¼, SE¼NW¼,
containing 80.00 acres more or less.

Parcel 2, casefile N–75922 located at:
T. 12 N., R. 67 E.,
Section 12, SW¼NE¼, NW¼SE¼, W½NE¼SE¼, SE¼NW¼, NE¼NW¼,
containing 180.00 acres more or less.

Parcel 3, casefile N–75921 located at:
T. 13 N., R. 61 E.,
Section 35, Lots 3 and 4, SE¼, SW¼NE¼,
containing 200.00 acres more or less.

Parcel 4, casefile N–75926 located at:
T. 15 N., R. 63 E.,
Section 12, W½W½, W½E½NW¼, W½E½SW¼,
containing 240.00 acres more or less.

Parcel 5, casefile N–75925 located at:
T. 17 N., R. 55 E.,
Section 6, Lots 5 and 6, SW¼SE¼NW¼, N½NW¼NE¼SW¼,
containing 10.00 acres more or less.

Parcel 6, casefile N–75920 located at:
T. 17 N., R. 64 E.,
Section 18, SE¼NE¼,
containing 40.00 acres more or less.

Parcel 7, casefile N–75924 located at:
T. 21 N., R. 64 E.,
Section 19, Lots 3 and 4, SE¼SW¼, S½SW¼,
Section 20, S½SW¼,
containing 279.20 acres more or less.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest. The subject lands will be sold for at least fair market value as determined by appraisal. In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-refundable filing fee in conjunction with the final payment for processing of the conveyance of the locatable mineral interests. The parcels will be offered for competitive sale by oral auction. The date of the oral auction is unknown at this time; once the known date is determined a notice will be published in the **Federal Register**. Lands will not be offered for sale until at least 60 days after the date of publication of this future notice in the **Federal Register**. The highest qualifying bid for each parcel will be declared the high bid. The apparent high bidder must submit the required bid deposit immediately following the close of the sale in the form of cash, personal check, bank draft, cashiers check, money order, or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid. The remainder of the full bid price must be paid within 180 calendar days of the date of sale. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the bid deposit to be forfeited to the BLM. If the highest qualified bid is rejected or the bidder released from it, the authorized officer will determine if the parcel shall be reoffered to the next highest bidder. If the lands are not sold, they may remain available for sale on a continuing basis until sold. Federal law requires that bidders must be U.S. citizens 18 years of age or older, a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity, including but not limited to associations or partnerships, capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit. In order to determine the fair market value of the subject public lands through appraisal, certain assumptions have been made on the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed

or approved by units of local government.

Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale; conveyance of the subject lands will not be on a contingency basis. It is the buyers' responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyers' responsibility to be aware of existing and potential uses for nearby properties.

When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

The patent, when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All the oil and gas mineral deposits in the land subject to this conveyance, including without limitation, the disposition of these substances under the mineral leasing laws. Its permittees, licensees and lessees, the right to prospect for, mine and remove the mineral owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the mineral leasing laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling, underground, or surface mining operation, storage and transportation facilities deemed necessary and authorized under law and implementing regulations.

3. All land parcels are subject to all valid and existing rights. Encumbrances of records are available for review during business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, at the Bureau of Land Management, Ely Field Office, 702 North Industrial Way, Ely, Nevada.

4. The parcels are subject to reservations for roads, public utilities and flood control purposes, both existing and proposes, in accordance with the local governing entities' Transportation Plans.

5. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold harmless the United States from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgements of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or leasees, or any third party, arising out of, or in connection with, the patentee's use, occupancy, or operations of the patented real property. The indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or leasees , or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violation of federal, state, and local laws and regulations that are now, or may in the future become, applicable to the real property; (2) Judgements, claims, or demands of any kind assessed against the United States: (3) Costs, expenses, or damages of any kind incurred by the United States: (4) or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resources damages as defined by federal and state laws. This convent shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, and leasing under the mineral leasing laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding this action to the Assistant Field Manager, Nonrenewable Resources at the address listed above. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. Any comments received during the process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to the Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentor's request to have their name and/or address withheld from the public release will be honored to the extent permissible by law.

Dated: July 23, 2002.

Mark S. Henderson,

Acting Assistant Field Manager, Nonrenewable Resources.

[FR Doc. 02–21396 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–1430–01; N–66421]

Notice of Realty Action: Non-Competitive Sale of Public Lands in Lincoln County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The below listed public land in Caliente, Lincoln County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than fair market value. In accordance with Section 7 of the Act of June 28, 1934, as amended, 43 U.S.C. 315f and EO 6910, the described lands are hereby classified as suitable for disposal under the authority of Section 203 and Section 209 of the Federal Land Policy and Management Act of October 21, 1976; 43 U.S.C. 1713 and 1719.

DATES: Interested parties may submit comments to the Assistant Field Manager, Nonrenewable Resources until October 7, 2002.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Jeffrey A. Weeks, Assistant Field Manager, Nonrenewable Resources, HC 33, Box 33500, Ely, Nevada 89301–9408.

FOR FURTHER INFORMATION CONTACT: Kevin Finn, Realty Specialist, at the above address or telephone (702) 289–1849.

SUPPLEMENTARY INFORMATION: The following described parcel of land, situated in Lincoln County is being offered as a direct sale to the City of Caliente.

Mount Diablo Meridian, Nevada

T. 4 S., R. 66 E., Sec. 12,
S½NE¼SE¼SE¼NE¼, SE¼SE¼NE¼,
E½NE¼NE¼SE¼,
E½NW¼NE¼NE¼SE¼,
E½SW¼NE¼NE¼SE¼,
NE¼SE¼NE¼SE¼.
T. 4 S., R. 67 E., Sec. 7, Lots 3, 4.
containing 105.21 acres.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest. In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests, excluding those mineral interests retained by the federal government. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests. The direct sale of this land is supported by the Lincoln County Commissioners.

The purpose of the sale is to allow for the City of Caliente to construct an industrial park. The proportion of existing Recreation & Public Purposes Lease N–12843 issued to the City of Caliente and encumbering the sale site will be relinquished by the City of Caliente immediately prior to patent.

Appraised value of the above described parcel is $150,000.

The patent, when issued, will contain the following reservations to the United States:

(1) A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

(2) All the sodium, potassium and oil and gas mineral deposits in the land subject to this conveyance.

(3) All prior existing rights.

All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold harmless the United States from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third party, arising out of, or in connection with, the patentee's use, occupancy , or operations of the patented real property. The indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violation of federal, state, and local laws and regulations that are now, or may in the future become, applicable to the real property: (2) Judgments, claims or demands of any kind assessed against the United States: (3) Costs, expenses, or damages of any kind incurred by the United States: (4) or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resources damages as defined by federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Upon publication of this notice in the **Federal Register**, the above-described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws. The segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding this action to the Assistant Field Manager, Nonrenewable Resources at the address listed above. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may reject an offer to purchase, if in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: June 25, 2002.

Jeffrey A. Weeks,

Assistant Field Manager, Nonrenewable Resources.

[FR Doc. 02–21397 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–010–1232–HB–UT17–24–1A]

Notice of Proposed Supplementary Rules on Public Lands in Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rules for certain public lands managed by the Bureau of Land Management within the Little Sahara Special Recreation Management Area (SMRA), Fillmore Field Office, Utah.

SUMMARY: The Bureau of Land Management (BLM) is proposing supplementary rules to apply to the public lands within the Little Sahara Special Recreation Management Area (SRMA), Fillmore Field Office, Utah. The rules are necessary for the management of actions, activities, and public use on certain public land which may have or are having adverse impacts on persons using public lands, on property, and on resources located on public lands located in, or acquired for inclusion within, the Little Sahara Recreation Management Area.

DATES: Comments on the proposed supplementary rules must be received or postmarked by 30 days after publication of this notice to be assured consideration. In developing final supplementary rules, BLM may not consider postmarked or received in person or by electronic mail after this date.

ADDRESSES: Mail: Bureau of Land Management 115 E 500 N, Fillmore, Utah 84631. Personal or messenger delivery: 115 E 500 N, Fillmore, Utah 84631.

FOR FURTHER INFORMATION CONTACT: Ferris Clegg, Bureau of Land Management, Richfield Field Office 150

East 900 North, Richfield, Utah 84701. Telephone (435) 896–1500.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Please submit your comments on issues related to the proposed supplementary rules, in writing, according to the **ADDRESSES** section above. Comments on the proposed supplementary rules should be specific, should be confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. When possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period or comments delivered to an address other than those listed above.

BLM will make your comments, including your name and address, available for public review at the Fillmore Field Office address listed in **ADDRESSES** above during regular business hours (8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays). If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

II. Discussion of the Supplementary Rules

The Utah State Director of the Bureau of Land Management is establishing these supplementary rules which are necessary for the protection of persons, property and public lands and resources within the Little Sahara Special Recreation Management Area, lands acquired for inclusion in the Little Sahara Special Recreation Management Area, and all lands that may be incorporated into the Little Sahara Recreation Management Area, in the Fillmore Field Office, as provided for in 43 CFR 8365.1–6.

These rules are in addition to and supplement the rules found in 43 CFR part 8300.

The affected lands are located in the following areas:

Salt Lake Base Meridian

T.12S.,R.4W.
- Sec. 19, lots 3 and 4, E½SW¼, and SE¼;
- Sec. 20, W½SW¼, and SE¼SW¼;
- Sec. 28, S½SW¼;
- Sec. 29, W½NE¼, SE¼NE¼, W½, and SE¼;
- Secs. 30 to 33, inclusive;
- Sec. 34, SW¼NW¼, SW¼, and S½SE¼.

T.13S., R.4W.
- Secs. 3 to 10, inclusive;
- Sec. 15, N½,SW¼,N½SE¼, and SW¼SE¼;
- Secs. 16 to 21, inclusive;
- Sec. 22, NW¼,W½SW¼;
- Sec. 28, lots 1, 2, 3, and 4;
- Sec. 29, lots 1, 2, 3, and 4, SW¼NE¼, S½NW¼SW¼, and W½SE¼;
- Sec. 30 and 31;
- Sec 32, W½E½, W½.

T.14S., R4W.
- Sec. 5, lots 1, 2, 3, and 4, S½N½, SW¼, and W½SE¼;
- Secs. 6 and 7;
- Sec. 8, W½
- Sec. 17, W½NW¼;
- Sec. 18. T.12S., R5W;
- Sec. 24, S½;
- Secs. 25 to 29, inclusive;
- Secs. 30, SE¼NE¼,SE¼SW¼, and SE¼;
- Secs. 31 to 36, inclusive.

T.13S., R5W.
- Secs. 1 to 36, inclusive.

T.14S., R5W.
- Secs. 1 to 5, inclusive;
- Sec. 6, lots 1 to 9, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
- Sec. 7, E½;
- Secs. 8 to 15, inclusive;
- Sec. 16, N½;
- Sec. 17, N½;
- Sec. 18, NE¼NE¼;
- Secs. 22 to 24, inclusive;

III. Procedural requirements

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 or more on the economy. They are directed at preventing unlawful personal behavior on public lands, for purposes of protecting public health and safety. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. They proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues. The supplementary rules merely enable BLM law enforcement personnel to enforce state law where appropriate on public lands.

Clarity on the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed rule clearly stated?

(2) Does the proposed rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in Bold type and is preceded by the abbreviation ''Sec.'' and a numbered heading; for example, Sec. 1.3 Protective Headgear.)

(5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

If you have any comments that concern how we could make this proposed rule easier to understand, in addition to sending the original to the address shown in **ADDRESSES**, above, please send a copy to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Execsec@ios.doi.gov.*

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the proposed supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The proposed supplementary rules will enable BLM law enforcement personnel to cite persons not obeying the rules of the Little Sahara Recreation Area for the purpose of protecting public health and safety. BLM has placed the EA and the Finding of NO Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. BLM invites the public to review these

documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the Written Comments section above.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proposed supplementary rules do not pertain specifically to commercial or governmental entities of any size, but contain rules to protect the health and safety of individuals, property, and resources on the public lands. Therefore, BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). Again, the supplementary rules pertain only to individuals who may use the public lands. In this respect, the regulation of such use is necessary to protect the public lands and facilities and those, including small business concessioners and outfitters, who use them. The supplementary rules have no effect on business-commercial or industrial use of the public lands.

Unfunded Mandates Reform Act

These proposed supplementary rules do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these proposed supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. The supplementary rules do not require anything of State, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions, and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anyone's property rights. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rules will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules apply in only one State, Utah, and do not address jurisdictional issues involving the State government. Therefore, in accordance with Executive Order 13132, BLM has determined that these proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, Utah State Office of BLM has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of this supplementary rules is Ferris Clegg of the Fillmore Field Office, BLM.

Dated: October 17, 2001.

Sally Wisely,

State Director.

[**Editorial Note:** This document was received at the Office of the Federal Register on August 16, 2002.]

Supplementary Rules, Little Sahara Special Recreation Management Area

Sec. 1.0 Vehicle Equipment Requirements

Sec. 1.1 Safety Flags

a. A safety flag is required on all off-highway vehicles. This includes all all-terrain vehicles (ATVs), dirt bikes and dune buggies. You must not operate, or give any person permission to operate, an off-highway vehicle that is not equipped with a safety flag within the Little Sahara Special recreation Management Area.

b. The safety flag must be—

1. Red or orange in color and a minimum of six by 12 inches;

2. Attached to the off-highway vehicle in such a manner that the top of the flag is at least eight feet above the surface of level ground.

Sec. 1.2 Minimum Age

a. You must be 8 years of age or older to operate or ride on an off-highway vehicle within the Little Sahara Special Recreation Management Age.

b. You must not give any child under 8 years of age permission to operate any off-highway vehicle within the Little Sahara Special Recreation Management Area.

Sec. 1.3 Protective Headgear

a. You must not operate or ride on an off-highway vehicle within the Little Sahara Special Recreation Management Area unless you are wearing properly fitted, safety-rated protective headgear designed for motorized vehicle use, if you are under the age of 18.

b. You must not vie permission to any person under the age of 18 to operate or ride on an off-highway vehicle within the Little Sahara Special Recreation Management Area unless that person is wearing properly fitted, safety-rated protective headgear designed for motorized vehicle use.

Sec. 20 Prohibited Acts

Sec. 2.1 Government Property

Your must not vandalize, climb on or otherwise interfere or tamper with any building, structure, sign, water line water tank equipment, or any other government property or government contracted property within the Little Sahara Special Recreation Management Area.

Sec. 2.2 Spray Paint

The following are prohibited:

a. The use of spray paint or paint-ball guns within the Little Sahara Special Recreation Management Area except for:

1. The official business of any Federal, state, county, or local governmental entity, or

2. The necessary performance of work related to the maintenance or construction of any authorized improvements or facilities on public lands;

b. The possession of spray paint containers within the Little Sahara

Special Management Area, except when such containers of spray paint are located—

1. In the trunk of a motor vehicle; or

2. In some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers, if the motor vehicle is not equipped with a trunk.

Sec. 2.3 Glass Containers

Within the Little Sahara Special Recreation Management Area, you must not possess glass containers outside of vehicles, camp trailers, or tents.

Sec. 2.4 Bonfires

You must not knowingly create or maintain any large bonfire within the area of Little Sahara Special Recreation Management Area. For the purpose of this supplemental rule, a large bonfire means a fire with flames over three feet tall or a fire that cannot be contained in a 3-foot diameter area.

Sec. 2.5 Wooden Pallets

You must not bring into the Little Sahara Special Recreation Management Area or possess within the Little Sahara Special Recreation Management Area any pallets or lumber or wood products with nails or other metal objects affixed to such wood, lumber or wood products. You may carry or possess wood or lumber so long as they do not have nails or other metal objects attached to them.

Sec. 3.0 Permits and Fees

Sec. 3.1 Fees

Except as provided in Sec. 3.2 of these supplementary rules—

a. You must not enter the Little Sahara Special Recreation Management Area by any means or ways, public or private, without properly paying required fees.

b. Your must not enter, camp, park, or stay longer than one hour within the Little Sahara Special Recreation Management Area without properly paying required fees.

Sec. 3.2 Contracts

a. You may not enter the Little Sahara Special Recreation Management Area without paying required fees, unless you have a current annual pass contract or obtain a temporary contract in lieu of fees from BLM and sign it in the presence of the issuing officer.

b. You must not violate the terms, conditions, and stipulations of your current annual pass contract or a temporary contract in lieu of fees under paragraph a. of this section.

Sec. 4.0 Penalties

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), if you knowingly and willfully violate or fail to comply with any of the supplementary rules provided in this notice you may be subject to a fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733.

[FR Doc. 02–21388 Filed 8–21–02; 8:45 am]

BILLING CODE 4110–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–02–1220–PD–241A]

Interim Final Supplementary Rules for the Sand Mountain and the Walker Lake Recreation Areas; Churchill and Mineral County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Interim final supplementary rules.

SUMMARY: The Carson City Field Office Manager establishes these Supplementary Rules to provide for the protection of persons, property, and public lands and resources. They consolidate and clarify rules published in previous **Federal Register** notices, establish that Sand Mountain will be subject to a user fee collection and establish additional supplementary rules of conduct for visitors to the Sand Mountain and the Walker Lake Recreation Areas.

DATES: The following supplementary rules are being published on an interim final basis, effective August 22, 2002. You may send your comments about these supplementary rules to the address below. Comments must be received or postmarked by September 23, 2002.

ADDRESSES: Mail: Manager, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701.

Personal or messenger delivery: 5665 Morgan Mill Road, Carson City, Nevada 89701. Internet e-mail: *Christina_Miller@nv.blm.gov*

FOR FURTHER INFORMATION CONTACT: Chris Miller, Outdoor Recreation Planner, or Terry Knight, Acting Deputy Assistant Manager, Non-Renewable Resources, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Telephone (775) 885–6000. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

Please submit your comments on issues related to the supplementary rules, in writing, according to the **ADDRESSES** section above. Comments on the supplementary rules should be specific, should be confined to issues pertinent to the supplementary rules, and should explain the reasons for any recommended change. Where possible, your comments should reference the specific section or paragraph of the interim final rule that you are addressing. BLM may not necessarily consider, or include in the Administrative Record, comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

Under certain conditions, BLM can keep your personal identification confidential. You must prominently state your request for confidentiality at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

Discussion of Rules

Certain other prohibited activities were recommended in the Recreation Area Management Plan for the Sand Mountain Recreation Area. These recommendations subsequently were published as specific prohibited acts in the **Federal Register** on July 1, 1992. These rules required minor modification and clarification.

Certain other supplementary rules are necessary in order to provide for the safety of visitors to the Recreation Areas. Speed limits are needed on access roads and in designated camping areas. Ignition of fireworks is a violation of State law and a danger to both persons and property.

Clarification of existing rules is needed to protect plant life, wildlife habitat and historic resources, and due to increases in public use we are proposing additional rules. Indiscriminate vehicle use in that portion of the Sand Mountain Recreation Area, where the off-road vehicle designation is ''limited'', has destroyed vegetation, caused harassment of wildlife, and threatens the integrity of the Sand Springs Pony Express Station and Desert Study Area.

These supplementary rules specifically identify those routes that are open to vehicle use within this ''limited'' designation area. Rules regarding the closure of certain lands within the Recreation Area to camping were published in the **Federal Register** on July 1, 1992. This notice contains a legal description of those lands and designates the area of Developed Recreation Site for the Walker Lake Recreation Area.

Procedural Matters

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

BLM has determined that the supplementary rules are categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, the supplementary rules do not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules are not a ''major rule'' as defined at 5 U.S.C. 804(2). These rules are limited in scope to a small section of public land and are intended to establish rules of conduct and acceptable behavior at the site for the protection of resources and the visiting public.

These supplementary rules do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. These supplementary rules do not require funding or resources from State, Local, or tribal governments. These supplementary rules do not affect private property or property rights nor are they intended to deny or constrain any valid existing right. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

These supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules are applicable only on public land managed by the BLM and do not extend to adjacent private property. No taking of private property is contemplated in these supplementary rules. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

The supplementary rules will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. These supplementary rules are intended to protect property, resources, and the visiting public on a designated area of public land. The scope and effect of these supplementary rules are limited to those public purposes and do not redefine or impact established governmental structures, responsibilities, policies, or procedures. Therefore, in accordance with Executive Order 13132, BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Under Executive Order 12988, we have determined that these supplementary rules will not unduly burden the judicial system and that these supplementary rules meet the requirements of sections 3(a) and 3(b)(2) of the Order. These supplementary rules have been written in plain text and are clearly understandable.

In accordance with Executive Order 13175, we have found that this final rule does not include policies that have tribal implications. These supplementary rules do not impact tribal lands nor are they intended to limit or interfere with any right or privilege granted to Native Americans.

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Lands Covered by the Supplementary Rules

The public lands affected by these restrictions are described as follows:

Sand Mountain Recreation Area

Mt. Diablo Meridian

T. 16 N., R 32 E.,
Sec. 4: Lots 1—4 inclusive, SW¼NE¼, S½NW¼, N½SW¼, SW¼SW¼;
Sec. 5: Lots 1–4 inclusive, S½N½, All public land north of U.S. Route 50;
T. 17 N., R 32 E.,
Sec. 15: S½S½;
Sec. 16: SE¼SE¼;
Sec. 20: SE¼;
Sec. 21: All
Sec. 22: W½, NE¼;
Sec. 28: All
Sec. 29: All
Sec. 32: All
Sec. 33: All

Walker Lake Recreation Area

Includes all public land east of U.S. Route 95 to Walker Lake within:

Mt. Diablo Meridian

T. 10 N., R 29 E.,
Sec. 5:
Sec. 8:
Sec. 17:
Sec. 20:
Sec. 29:
Sec. 32:

The principal author of these supplementary rules is Stanley Zuber of the Carson City Field Office, Bureau of Land Management, Department of the Interior.

For the reasons stated in the preamble, and under the authority of 43 CFR part 8360, sections 8364.1, 8365, 8365.1–2, 8365.1–6 and 8365.2, the BLM State Director, Nevada, issues the following supplementary rules.

Dated: April 23, 2002.

Jean Rivers-Council,

Acting State Director, Nevada.

Supplementary Rules for the Sand Mountain Recreation Area

Sec. 1 Motor Vehicle Rules

a. All motorized vehicles, other than those traveling on maintained roads, must be equipped with an 8 foot whip mast and a six (6) inch by twelve (12) inch solid red or orange colored safety flag. Flags may be pennant, triangle, square, or rectangular shape. The mast must be securely mounted on the vehicle and extend eight (8) feet from the ground to the mast tip when the vehicle is stopped. Safety flags must be attached within 10 inches of the tip of the whip mast with club or other flags mounted below safety flag or on another whip.

b. You must not operate any motorized vehicle in excess of 25 mph on any maintained road within the Recreation Area, or in excess of 15 mph within any designated camping area.

c. Within that portion of the Recreation Area where vehicle use is designated as ''limited'', there are only two roads open to motorized vehicles. These roads are:

(1) The main access road leading from U.S. Route 50 to the northernmost restroom facility and,

(2) The secondary access road leading from the main access road to the parking area near the Sand Springs Pony Express Station and Desert Study Area.

d. No person shall drink an alcoholic beverage, or have in their possession or on their person any open container that contains an alcoholic beverage, while operating in or on a motorized vehicle.

Sec. 2 Other Restrictions on Recreation Use

a. You must not camp on the following lands, other than in an area designated for that purpose:

Mt. Diablo Meridian

T. 17 N., R. 32 E.,
Sec. 28 SW¼:
Sec. 29 E½SE1/4, W½SE¼;

b. You must not camp on any other public lands within the Sand Mountain Recreation Area in Sec. 5, T.16N, R.32E, or within one mile of the boundary of the Recreation Area.

c. You must not operate or use any audio equipment, such as a radio, television, musical instrument, or other noise producing device, or motorized equipment, between the hours of 12 a.m. and 6 a.m. in a manner that makes unreasonable noise that disturbs other visitors; or operate or use a public address system without written authorization from the Field Office Manager.

d. Persons using the area will be subject to a user fee.

Sec. 3 Prohibited Acts

You must not:

a. Operate a motorized vehicle in the Recreation Area without the attached safety flag as described under Sec. 1 a. of these supplementary rules;

b. Operate a motorized vehicle in excess of the posted speed limit;

c. Drink an alcoholic beverage, or have in your possession or on your person any open container that contains an alcoholic beverage, while operating in or on a motorized vehicle;

d. Camp outside the designated camping area described in Sec. 2a. of these supplementary rules;

e. Discharge any firearms, fireworks, or projectiles;

f. Make any unreasonable noise that disturbs other visitors between the hours of 12 a.m. and 6 a.m. as described in Sec. 2c. of these supplementary rules;

g. Possess or use any glass cup or bottle, empty or not, used for carrying any liquid for drinking purposes;

h. Bring in, dispose of or possess any firewood containing nails, screws, or other metal hardware;

i. Dump gray or wastewater at the Recreation Area; or

j. Use Sand Mountain Recreation Area without paying the user fee.

Sec. 4 Penalties

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), any person failing to comply with these supplementary rules may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, other penalties in accordance with 43 U.S.C. 1733, or both.

Sec. 5 Administrative and Emergency Use

These supplementary rules do not apply to emergency or law enforcement personnel, or BLM employees engaged in the performance of their official duties.

Supplementary Rules for the Walker Lake Recreation Area

Sec. 1 Motor Vehicle Rules

a. No person shall operate any motorized vehicle in excess of 25 mph on any maintained road within the Recreation Area, or in excess of 15 mph within any designated camping area.

b. No person shall drink an alcoholic beverage, or have in their possession or on their person any open container that contains an alcoholic beverage, while operating in or on a motorized vehicle.

Sec. 2 Developed Recreation Site

The following lands are designated as the developed recreation site as defined in 43 CFR 8360.0–5(c). Includes all public land east of U.S. Route 95 to Walker Lake within:

Mt. Diablo Meridian

T. 10 N., R 29 E.,
Sec. 29;
Sec. 32:

Rules stated in 43 CFR 8365.2 apply to this area.

Sec. 3 Other Restrictions on Recreation Use

No person shall operate or use any audio equipment, such as a radio, television, musical instrument, or other noise producing device, or motorized equipment, between the hours of 12 a.m. and 6 a.m. in a manner that makes unreasonable noise that disturbs other visitors; or operate or use a public address system without written authorization from the Field Office Manager.

Sec. 4 Prohibited Acts

You must not:

a. Operate a motorized vehicle in excess of the posted speed limit;

b. Drink an alcoholic beverage, or have in your possession or on your person any open container that contains an alcoholic beverage, while operating in or on a motorized vehicle;

c. Discharge any firearms, fireworks, or projectiles.

f. Make any unreasonable noise that disturbs other visitors between the hours of 12 a.m. and 6 a.m. as described in Sec. 6a. of these supplementary rules.

g. Possess or use any glass cup or bottle, empty or not, used for carrying any liquid for drinking purposes;

h. Bring in, dispose of or possess any firewood containing nails, screws, and other metal hardware.

i. No dumping of gray or wastewater at Sand Mountain Recreation Area.

Sec. 5 Penalties

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), any person failing to comply with these supplementary rules may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, other penalties in accordance with 43 U.S.C. 1733, or both.

Sec. 6 Administrative and Emergency Use

These supplementary rules do not apply to emergency or law enforcement personnel, or BLM employees engaged in the performance of their official duties.

[FR Doc. 02–21395 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MTM 93636]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; MT

AGENCY: Bureau of Land Management, Interior

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw 170.00 acres of National Forest System land to protect the Big Ice Cave and its subterranean water supply. The land was previously withdrawn by Public Land Order No. 6119 which has expired. Protection is still needed for this unique geologic and hydrologic formation and its important cultural and recreational values. This notice segregates the land for up to 2 years from location or entry under the United States mining laws. The land will remain open to all other uses which may by law be made of National Forest System land.

DATES: Comments and requests for a public meeting must be received by September 23, 2002.

ADDRESSES: Comments and meeting requests should be sent to the Forest Supervisor, Custer National Forest, P.O. Box 50760, Billing, Montana 59105.

FOR FURTHER INFORMATION CONTACT: Susan Newell, Custer National Forest, P.O. Box 50760, Billings, Montana 59105, 406–657–6200, extension 225, or Sandy Ward, BLM Montana State Office, 406–896–5052.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to withdraw the following described National Forest System land from location or entry under the United States mining laws, subject to valid existing rights:

Custer National Forest

Principal Meridian, Montana

Unsurveyed, but which probably will be when surveyed:

T.8 S., R. 27 E.,
Sec. 3, SE¼
Sec. 10, N½N½NW¼NE¼.

The area described contains 170.00 acres in Carbon Country.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed extension may present their views in writing to the Forest Supervisor, Custer National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed extension. All interested persons who desire a public meeting for the purpose of being heard on the proposal must submit a written request, by the date specified above, to the Forest Supervisor, Custer National Forest. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days prior to the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: March 8, 2002.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 02–21393 Filed 8–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: New Collection; Making Officer Redeployment Effective (MORE) Closeout Report.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 21, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(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, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Making Officer Redeployment Effective (MORE) Closeout Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* COPS Form Number: N/A.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: MORE award recipients. Other: None. Abstract: The information collected will be used by the COPS Office to determine that MORE award recipients have completed the grant programmatic requirements.

(5) *As estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,856 responses per year. The estimated amount of time required for the average respondent to respond is: 1.0 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,712 annually.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 16, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–21450 Filed 8–21–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Occidental Chem. Corp.,* Civ. A. No. 4:CV–98–0686, was lodged on August 2, 2002, with the United States District Court for the Middle District of Pennsylvania.

In this action, the United States sought recovery of past and future response costs under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, the imposition of a civil penalty under Section 106 of CERCLA, 42 U.S.C. 9606, due to Occidental Chemical Corporation's (''Occidental'') failure to comply with EPA's 1997 Unilateral Administrative Order (''UAO''), Docket No. III–97–79–DC, and injunctive relief requiring Occidental to comply with the UAO in the future. Under the Consent Decree, Occidental will pay the United States $561,000 for past and future response costs incurred or to be incurred in connection with the clean-up of the Centre County Kepone Superfund Site (''the Site''), located in State College, Centre County, Pennsylvania.

Furthermore, in order to fulfill its obligations under the UAO, which directed Occidental to ''participate and cooperate'' in performing the response actions at Operable Unit #1 (''OU–1'') of the Site with Ruetgers Organics Corporation (''ROC''), Occidental will make a good faith offer to ROC of at least $220,000 as its appropriate share of the response actions to be performed under the UAO. If ROC rejects Occidental's good faith offer, Occidental will instead pay $220,000 to the EPA Hazardous Substance Superfund in reimbursement for response costs incurred in connection with OU–1 at the Site.

Finally, to resolve its failure to comply with the UAO, Occidental will pay a civil penalty of $21,000 and perform a Supplemental Environmental Project (''SEPP''), involving the acquisition of an environmental easement, the Hartle Farm, at a cost of at least $84,000.

The Department of Justice will receive, for a period of not less than thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Occidental Chem. Corp.* (4:CV–98–0686), DOJ Ref. #90–11–3–1436A.

The Consent Decree may be examined at the Office of the United States Attorney, 228 Walnut Street, Room 220, Harrisburg, PA 17108, and at the Region III Office of the Environmental Protection agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood at (202) 514–0097 [Phone confirmation number (202) 514–1547]. In requesting a copy from the Consent Decree Library, please refer to the referenced case and enclose a check in the amount of $10.25 (25 cents per page reproduction cost), payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 02–21369 Filed 8–21–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. National Association of Police Equipment Distributors, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Southern District of Florida in *United States of America* v. *National Association of Police Equipment Distributors, Inc.* (''NAPED''), Civil Action No. 02–80703. On July 29, 2002, the United States filed a Complaint to obtain equitable and other relief to prevent and restrain violations of Section I of the Sherman Act as amended, 15 U.S.C. 1. The United States brought this action to enjoin NAPED from engaging in an unlawful group boycott of manufacturers that participated or considered participating in the United States General Services Administration program under Section 1122 of the National Defense Authorization Act of 1994 to make available police equipment products to state and local law enforcement agencies at GSA-negotiated prices. The proposed Final Judgment, filed at the same time as the Complaint, requires NAPED to eliminate the anticompetitive conduct identified in the Complaint.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW., and at the Office of the Clerk of the United States District Court for the Southern District of Florida, West Palm Beach Florida.

Public comment is invited within sixty (60) days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Marvin N. Price, Jr., Chief, Chicago Field Office, Antitrust Division, U.S. Department of Justice, 209 S. LaSalle Street, Suite 600, Chicago, IL 60604, (telephone: (312) 353–7530).

Dorothy B. Fountain,

Deputy Director of Operations.

Stipulation

The undersigned parties, by their respective attorneys, stipulate as follows:

1. A Final Judgment in the form attached hereto may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. Defendant shall abide by and comply with the provisions of the

proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court rule declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

3. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

4. For purposes of this Stipulation and the accompanying Final Judgment only, defendant stipulates that: (i) The Complaint states a claim uopn which relief may be granted under Section 1 of the Sherman Act; (ii) the Court has jurisdiction over the subject matter of this action and over each of the parties hereto; and (iii) venue of this action is proper in this Court.

5. In the event plaintiff withdraws its consent, as provided in paragraph (1) above, or in the event that the Court declines to enter the proposed Final Judgment pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendant represents that the undertakings ordered in the proposed Final Judgment can and will be satisfied, and that defendant will not later raise claims of hardship or difficulty as grounds for asking the Court to modify any of the undertakings contained therein.

Dated: July 25, 2002.

For Plaintiff United States of America:

Charles A. James,
Assistant Attorney General.

Deborah P. Majoras,
Deputy Assistant Attorney General.

Dorothy B. Fountain,
Deputy Director of Operations.

Marvin N. Price. Jr.,
Chief, Chicago Field Office.

Frank J. Vondrak
Assistant Chief, Chicago Field Office.

For Defendant Naped, INC.

Paula Cozzi Goedert, Esq.,
IL Bar #00978515, Jenner & Block, One IBM Plaza, Chicago, IL 60611, (312) 222–9350, (312) 527–0484 (Fax), E–Mail: pgoedert@jenner.com.

Rosemary Simota Thompson,
IL Bar #6204990, E-Mail:
rosemary.thompson@usdoj.gov.

Donna Alberts Peel,
Attorney.

Diane Lotko-Baker,
Attorney.

Attorneys, U.S. Department of Justice, Antitrust Division, 209 S. LaSalle Street, Suite 600, Chicago, Illinois 60604, (312) 353–7530, (312) 353–4136 (Fax).

III. Applicability

A. This Final Judgment applies to the defendant and to each of its officers, directors, agents and employees.

B. Defendant shall require, as a condition of any merger, reorganization, or acquisition by any other organization, that the organization to which defendant is to be merged or reorganized, or by which it is to be acquired, agree to be bound by the provisions of this Final Judgment.

C. Nothing in this Final Judgment creates any rights for, or gives standing to, any person not a party to this action.

IV. Prohibited Conduct

Defendant is hereby enjoined from:

A. Directly or indirectly entering into, adhering to, or enforcing any agreement with any distributor or dealer to hinder through any means any manufacturer's participation in the GSA Program;

B. Directly or indirectly entering into, adhering to, or enforcing any agreement with any distributor or dealer to retaliate in any way against any manufacturer for participating or considering participating in or seeking information about the GSA Program;

C. Urging, encouraging, advocating or suggesting that any distributor or dealer urge, encourage, advocate, or suggest to any manufacturer that it discard Section 1122 purchase orders or commit any other misrepresentation to circumvent the requirements of the GSA Program;

D. Urging, encouraging, advocating or suggesting that any distributor or dealer refrain from conducting business with any manufacturer for participating in, considering participating in, or seeking information regarding the GSA Program;

E. Urging, encouraging, advocating or suggesting that any distributor, dealer or manufacturer (1) refuse to do business with particular persons or types of persons, (2) reduce the amount of business they do with particular persons or types of persons, or (3) do business with particular persons or types of persons only on specified terms.

II. Definitions

As used in this Final Judgment:

A. ''Agreement'' means a contract, arrangement, or understanding, formal or informal, oral or written, between to or more persons.

B. ''Dealer'' or ''Distributor'' means any person that distributes police equipment products manufactured by another person or who purchases or acquires such product for resale to any other person.

C. ''GSA'' means General Services Administration of the United States Government.

D. ''GSA Program'' means the General Services Administration's (''GSA'') program pursuant to Section 1122 of the National Defense Authorization Act of 1994, which permits state and local governments to purchase equipment products for drug interdiction under GSA schedules, and any other programs under which state and local governments are able to purchase police equipment products through a GSA schedule.

E. ''Manufacturer'' means any person who makes a assembles police equipment including each of its divisions, parents, subsidiaries, and affiliates.

F. ''NAPED'' or ''defendant'' means National Association of Police Equipment Distributors, Inc., including each of its committees, divisions, parents, subsidiaries, and affiliates, and any person action on behalf of any of them, as well as its successors and assigns.

G. ''Organizations'' means any corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute or other business, legal or government entity.

H. ''Person'' means any natural person, corporation, company, partnership, joint venture firm, association, proprietorship, agency, board, authority, commission, office or other business or legal entity, whether private or governmental.

I. ''Police Equipment'' means any product used primarily in law enforcement.

J. ''Section 1122'' means Section 1122 of the National Defense Authorization Act of 1994, which permits state and local governments to purchase police equipment products for drug interdiction under GSA schedules.

Final Judgment

Plaintiff, United States of America, filed its Complaint on July 29, 2002. Plaintiff and defendant, National Association of Police Equipment Distributors, Inc. (''NAPED''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not constitute any evidence against or an

admission by any party with respect to any issue of fact or law herein.

Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby ordered, adjudged, and decreed, as follows:

I. Jurisdiction and Venue

This court has jurisdiction over the subject matter of this action and over the defendant. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act, 15 U.S.C. 1. Venue is a proper in the District Court for the Southern District of Florida.

V. Limiting Conditions

A. Nothing in this Final Judgment shall prohibit defendant from:

1. Continuing to disseminate public statements regarding contemplated changes in the laws affecting the GSA Program, GSA policies, or procurement of police equipment by state and local governments;

2. Engaging in collective actions to procure government action when such actions are protected under the Noerr-Pennington doctrine, as established by *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961), and *United Mine Workers* v. *Pennington,* 381 U.S. 657 (1965);

3. Presenting the views, opinions or concerns of its members on topics to manufacturers, distributors or dealers, consumers, or other interested parties, provided that such activities do not violate any provision contained in Section IV above;

B. Nothing in this Final Judgment shall prohibit any individual distributor or dealer, acting alone and not on behalf of or in common with defendant or any of defendant's officers, directors, agents, employees, successors, or assigns, from negotiating any terms of its business relationship with any manufacturer, including terms related to a manufacturer's policies.

VI. Notification Provisions

Defendant is ordered and directed:

A. To publish the Final Judgment and a written notice, in the form attached as Appendix A to this Final Judgment, in *Law & Order* magazine within 60 days of the entry of this Final Judgment;

B. To send a written notice, in the form attached as Appendix A to this Final Judgment, to each distributor or dealer who is a current member of NAPED within 30 days of the entry of this Final Judgment; and

C. To send a written notice, in the form attached as Appendix A to this Final Judgment, to each distributor or dealer who becomes a member of NAPED within 10 years of entry of this Final Judgment. Such notice shall be sent within 30 days after the distributor or dealer becomes a member of NAPED.

VII. Compliance Program

A. Defendant is ordered to establish and maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for implementing the antitrust compliance program and achieving full compliance with this Final Judgment and the antitrust laws. The Antitrust Compliance Officer shall, on a continuing basis, be responsible for the following:

1. Furnishing a copy of this Final Judgment within 30 days of entry of the Final Judgment to each of defendant's officers, directors, and employees, except for employees whose functions are purely clerical or manual and do not address issues related to the sale or purchase of police equipment;

2. Furnishing within 30 days a copy of this Final Judgment to any person who succeeds to a position described in Section VII A.1;

3. Arranging for an annual briefing to each person designated in Section VII A.1 or 2 on the meaning and requirements of this Final Judgment and the antitrust laws;

4. Obtaining from each person designated in Section VII A.1 or 2 certification that he or she: (1) Has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (2) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer; and (3) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against NAPED and/or any person who violates this Final Judgment;

5. Maintaining: (1) A record of certifications received pursuant to this Section; (2) a file of all documents related to any alleged violation of this Final Judgment and the antitrust laws; and (3) a record of all communications related to any such violation, which shall identify the date and place of the communications, the persons involved, the subject matter of the communication, and the results of any related investigation;

6. Reviewing the final draft of each speech and policy statement made by any officer, director, or employee in order to ensure its adherence with this Final Judgment;

7. Reviewing the purpose for the formation or creation of each committee and task force in order to ensure its adherence with this Final Judgment;

8. Reviewing the content of each letter, memorandum, and report written by or on behalf of any director in his or her capacity as a NAPED director or on NAPED stationery in order to ensure its adherence with this Final Judgment.

B. If defendant's Antitrust Compliance Officer learns of any violations of any of the terms and conditions contained in this Final Judgment, defendant shall immediately take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VIII. Certification

A. Within 60 days after the entry of this Final Judgment, defendant shall certify to the plaintiff that it has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VII above.

B. For 10 years after the entry of this Final Judgment, on or before its anniversary date, defendant shall file with plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections VI and VII.

IX. Plaintiff's Access

A. For the purpose of determining or securing compliance with this Final Judgment or determining whether this Final Judgment should be modified or terminated, and subject to any legally recognized privilege, authorized representatives of the Antitrust Division of the United States Department of Justice, shall upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, be permitted:

1. Access during regular business hours to inspect and copy all records and documents in the possession, custody, or under the control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment;

2. To interview defendant's officers, directors, employees or agents, who may have their individual counsel present, regarding any such matters; and

3. To obtain written reports from defendant, under oath if requested, relating to any matters contained in this Final Judgment.

B. Defendant shall have the right to be represented by counsel in any process under this Section.

C. No information or documents obtained by the means provided in this Section shall be divulged by the plaintiff to any person other than duly authorized representatives of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies, in writing, the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, ''subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then 10 days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

X. Duration of the Final Judgment

Except as otherwise provided hereinabove, this Final Judgment shall remain in effect until 10 years from the date of entry.

XI. Construction, Enforcement, Modification and Compliance

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

XII. Public Interest

Entry of this Final Judgment is in the public interest.

Appendix A

On July 29, 2002, the Antitrust Division of the United States Department of Justice filed a civil suit alleging that the National Association of Police Equipment Distributors (''NAPED'') had engaged in certain practices that violated Section 1 of the Sherman Antitrust Act. Without being subject to any monetary penalties, NAPED has agreed to the entry of a civil consent order to settle this matter. The consent order does not constitute evidence or admission by any party with respect to any issue of fact or law. The consent order applies to NAPED and all of its officers, directors, employees, and agents, but not to any distributor or dealer acting on its own.

Under the consent order, NAPED may not enter into, adhere to, or enforce any agreement with any distributor or dealer to hinder through any means any manufacturers' participation in the GSA Program. The GSA Program includes the General Services Administration's (''GSA'') program pursuant to Section 1122 of the National Defense Authorization Act of 1994, which permits state and local governments to purchase police equipment products for drug interdiction under GSA schedules, and any other program under which state and local governments are able to purchase police equipment products through a GSA schedule.

The consent order further provides that NAPED may not enter into, adhere to, or enforce any agreement with any distributor or dealer to retaliate in any way against any manufacturer for participating or considering participating in or seeking information about the GSA Program. NAPED is also prohibited from recommending that any distributor or dealer: (1) Suggest to any manufacturer that it discard Section 1122 purchase orders or commit any other misrepresentation to circumvent the requirements of the GSA Program; or (2) refrain from conducting business with any manufacturer for participating in, considering participating in, or seeking information regarding the GSA Program. Furthermore, NAPED is prohibited from recommending that any distributor, dealer or manufacturer refuse to do business or reduce the amount of business it does with particular people or organizations, or types of people or organizations. Finally, NAPED is prohibited from recommending that any distributor, dealer, or manufacturer do business with particular people or organizations, or types of people or organizations, only on specified terms. Failure to comply with the consent order may result in conviction for contempt of court.

The consent order does not prohibit NAPED from continuing certain activities, including disseminating public statements regarding contemplated changes in the laws affecting the GSA Program, GSA policies, or procurement of police equipment by state and local governments; seeking to procure government action; and presenting members' views to distributors or dealers, manufacturers, consumers, or other interested parties in ways that do not otherwise violate the consent order.

Competitive Impact Statement

The United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On July 29, 2002, the United States filed a civil antitrust Complaint alleging that the defendant had violated Section 1 of the Sherman Act, 15 U.S.C. 1. The defendant, the National Association of Police Equipment Distributors, Inc. (''NAPED''), is a trade association. Its members are competing distributors and dealers of police equipment products such as body armor, batons, uniforms, and handcuffs. The Complaint alleges that, from 1998 to 1999, the defendant engaged in an unlawful group boycott of manufacturers who participated or considered participating in the United States General Services Administration program under Section 1122 of the National Defense Authorization Act of 1994 (''GSA Program'') to make police equipment products available to state and local law enforcement agencies at reduced prices.

On July 29, 2002, the United States and the defendant filed a Stipulation in which they consented to the entry of a proposed Final Judgment that requires the defendant to eliminate the anticompetitive conduct identified in the Complaint. Specifically, the proposed Final Judgment provides that the defendant may not enter into, adhere to, or enforce any agreement with any distributor or dealer to hinder any manufacturer's participation in the GSA Program. The proposed Final Judgment also provides that the defendant may not enter into, adhere to, or enforce any agreement with any distributor or dealer to retaliate against any manufacturer for participating or considering participating in or seeking information about the GSA Program. Defendant is also prohibited from recommending that any distributor or dealer: (1) Suggest to any manufacturer that it discard Section 1122 purchase orders or commit any other misrepresentation to circumvent the requirements of the GSA Program; or (2) refrain from conducting business with any manufacturer for participating in, considering participating in, or seeking information regarding the GSA Program. The defendant is prohibited from recommending that any distributor, dealer or manufacturer do business only with particular people or organizations, or types of people or organizations, or do business only on specified terms.

The United States and the defendant have agreed that the proposed Final Judgment may be entered after compliance with the APPA, provided that the United States has not withdrawn its consent. Entry of the Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the Final Judgment's provisions and to punish violations thereof.

II. Description of Practices Giving Rise to the Alleged Violation of the Antitrust Laws

A. Background on the GSA Program and the Defendant

GSA negotiates contracts with manufacturers of police equipment products that allow federal agencies to purchase such products at a discount. The GSA Program is authorized by Section 1122 of the National Defense Authorization Act of 1994, which permits state and local law enforcement entities to purchase products directly from manufacturers at prices negotiated by the GSA, as long as the equipment is used for drug interdiction.

Although the GSA Program was enacted into law in 1994, it was initially a pilot program. At first, any manufacturer that sold to federal entities under the GSA schedule was required to honor Section 1122 orders. In 1998, only a few states were fully operational participants and order volume was low. On January 1, 1999, the program was changed and manufacturers' participation in Section 1122 became voluntary. By 1999, over half of the states had committed to work on the GSA Program rollout, and order volume increased accordingly. Currently, most states are participants in the GSA Program.

Prior to the GSA Program, state and local governments purchased most law enforcement equipment from distributors or dealers at prices reflecting their mark-ups. After the GSA Program, manufacturers selling police equipment at GSA-negotiated prices competed with distributors for sales of police equipment to state and local law enforcement agencies. Thus, state and local law enforcement agencies could choose to buy police equipment directly from the manufacturers under the GSA Program at negotiated prices, or from distributors who often provided them with certain services not provided by manufacturers.

Defendant's members specialize in selling and servicing police equipment products to state and local law enforcement agencies and carry a small inventory. Generally, they do not have GSA contracts for federal sales. The typical NAPED member is a distributor or dealer who operates his or her own business, although a few large catalog houses are also members. The large catalog houses carry a significant inventory and sell by mail order. When state and local governments purchase directly from manufacturers under a discounted GSA schedule, distributors and dealers lose those sales.

B. Illegal Agreement To Boycott Manufacturers

In the spring of 1998, the defendant, through its officers, directors, and members, engaged in conduct to prevent manufacturers' participation in the GSA Program and thereby limit competition in the sale of police equipment to state and local law enforcement agencies. This conduct spanned approximately eighteen months.

During the summer of 1998, the defendant, through its members, contacted manufacturers under the guise of taking a survey of manufacturers' attitudes towards the GSA Program and pressured them to avoid their legal obligations to accept orders from state and local law enforcement and not to participate in the GSA program. The defendant monitored activities of manufacturers and encouraged its members to express their displeasure with 1122 sales and to discourage manufacturers' participation in the GSA program.

In the spring of 1999, defendant's officers told at least three manufacturers that distributors would not do business with them if they participated in the GSA Program. These manufacturers believed that these officers were speaking directly or indirectly on behalf of NAPED and its members. Defendant's efforts caused at lease some manufacturers to eliminate their participation in the GSA Program.

For example, one manufacturer, fearing that it would be ''blackballed'' by defendant's members for participating in a GSA Program event to attract purchasers and vendors, withdrew its registration for the event from the GSA Web site. Another manufacturer, which attended the GSA Program event, was excluded from the mail order catalog of one of NAPED's members as a result of its participation. Also, during a meeting with executives of a large manufacturer, defendant's then-president stated that the trade association would not ''support'' manufacturers that engaged in 1122 sales under the GSA Program. The executives understood this to mean that the members of NAPED would no longer do business with their company if it participated in the GSA Program.

C. Effects of the Agreement

The purpose and effect of the boycott agreement between defendant and its members was to prevent participation by manufacturers in the GSA Program and thereby preventing them from competing with distributors or dealers for the sale of police equipment to state and local law enforcement agencies. As a result of the agreement, participation by manufacturers in the GSA Program was significantly less than it otherwise would have been. Thus, state and local law enforcement agencies were deprived of some of the benefits of free and open competition in the purchase of police equipment products.

III. Explanation of the Proposed Final Judgment

A. Prohibited Conduct

The proposed Final Judgment prohibits the defendant from engaging in five (5) categories of prohibited conduct. These prohibitions are intended to deter the defendant from using the threat of a group boycott by its members to pressure manufacturers to decline participation in the GSA Program, or any other program under which state and local governments are able to purchase products through a GSA schedule. These provisions will also bar the defendant from urging its members to reduce or eliminate the amount of business they do with manufacturers engaged in the GSA Program.

Section IV.A of the proposed Final Judgment contains a general prohibition against any agreement by the defendant with any distributor or dealer to hinder any manufacturer's participation in the GSA Program. Section IV.B contains a similar prohibition against any agreement by the defendant with any distributor or dealer to retaliate against any manufacturer for participating or considering participating in the GSA Program. Section IV.C prohibits the defendant from urging, encouraging, advocating, or suggesting that any distributor or dealer urge, encourage, advocate, or suggest to any manufacturer that it discard 1122 purchase orders or commit any other misrepresentation to circumvent the requirements of the GSA Program. Section IV.D prohibits the defendant from urging, encouraging, advocating, or suggesting that any distributor or dealer refrain from conducting business with any manufacturer for participating in or considering participating in the GSA Program. Finally, Section IV.E prohibits the defendant from urging distributors, dealers, or manufacturers to refuse to do business or reduce their business with particular types of persons, or do business with particular persons only on specified terms.

B. Limiting Conditions

Section V of the proposed Final Judgment contains certain limiting provisions that clarify the scope of the prohibitions in Section IV. Section V

identifies specific activities that are unlikely to restrict competition and are not prohibited by the decree. Specifically, Section V.A provides that the defendant may: (1) Continue to disseminate public statements regarding contemplated changes in the laws affecting the GSA 1122 Program, GSA policies, or procurement of police equipment by state and local branches of government; (2) engage in collective action to procure government action, such as lobbying activities, when those actions are immune from antitrust challenge under the Noerr-Pennington doctrine; and (3) present the views, opinions, or concerns of its members on topics to manufacturers, distributors or dealers, consumers, or other interested parties, provided that such activities do not violate any provision contained in Section IV. Section V.B clarifies that nothing in the proposed Final Judgment limits individual distributor or dealers' rights to act independently.

C. Additional Relief

Section VI of the proposed Final Judgment requires the defendant to publish a notice describing the Final Judgment in *Law and Order,* an industry trade publication, within sixty (60) days after the proposed Final Judgment is entered. Section VI also requires that written notice be sent to all distributors or dealers who are current members of NAPED within thirty (30) days after the proposed Final Judgment is entered. A copy of the written notice also must be sent to each dealer or distributor who becomes a member of NAPED during the ten-year term of this Final Judgment.

Section VII requires the defendant to set up an antitrust compliance program to ensure that its members are aware of and comply with the limitations in the proposed Final Judgment and the antitrust laws. Section VII requires the defendant to designate an Antitrust Compliance Officer and to furnish a copy of the Final Judgment, together with a written explanation of its terms, to each of its officers, directors, and non-clerical employees who address issues related to the purchase and sale of police equipment products. The Antitrust Compliance officer is also required to review: (1) The final draft of each speech and policy statement by each officer, director, or employee; (2) the purpose for the creation of each committee and task force; and (3) the content of each letter, memorandum, and report written by or on behalf of each director in his or her capacity as a NAPED director, in order to ensure adherence to the Final Judgment.

Section VIII requires the defendant to certify the designation of an Antitrust Compliance Officer and the distribution of the Final Judgment as required by Section VII. It also requires the defendant to submit to the United States an annual statement regarding defendant's compliance with the Final Judgment.

Section IX of the proposed Final Judgment provides that, upon request of the Department of Justice, the defendant shall submit written reports, under oath, with respect to any of the matters contained in the Final Judgment. Additionally, the Department of Justice is permitted to inspect and copy all books and records, and to interview defendant's officers, directors, employees, and agents.

D. Effect of the Final Judgment

The parties have stipulated that the Court may enter the proposed Final Judgment at any time after compliance with the APPA. The proposed Final Judgment states that it shall not constitute any evidence against or an admission by either party with respect to any issue of fact or law. Section III of the proposed Final Judgment provides that it shall apply to the defendant and each of its officers, directors, agents, employees, successors, and assigns and to any organization to which it is to be merged or reorganized, or by which it is to be acquired.

The Government believes that the proposed Final Judgment is fully adequate to prevent the continuation or recurrence of the violations of Section 1 of the Sherman Act alleged in the Complaint, and that disposition of this proceeding without further litigation is appropriate and in the public interest.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Final Judgment has no prima facie effect in any subsequent lawsuits that may be brought against the defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest. The Department believes that entry of this Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Marvin N. Price, Jr., Chief, Chicago Field Office, U.S. Department of Justice, Antitrust Division, 209 S. LaSalle St., Suite 600, Chicago, Illinois 60604.

Under Section XI of the proposed Final Judgment, the Court will retain jurisdiction over this action, and the parties may apply to the Court for orders necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment. The proposed Final Judgment would expire ten (10) year from the date of its entry.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the Department considered litigation on the merits. The Department rejected that alternative for two reasons. First, a trial would involve substantial cost to both the United States and to the defendant and is not warranted because the proposed Final Judgment provides all the relief the Government would likely obtain following a successful trial. Second, the Department is satisfied that the various compliance procedures to which the defendant has agreed will ensure that the anticompetitive practices alleged in the Complaint are unlikely to recur and, if they do recur, will be punishable by civil or criminal contempt, as appropriate.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment is ''in the public interest.'' In making that determination, the Court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e).

As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[2]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981); see also Microsoft; 56 F.3d at 1458. Precedent requires that:

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. A ''proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' [4]

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Since the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing the case in the first place,'' it follows that court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. Id.

VIII. Determinative Materials And Documents

There are no determinative documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 25, 2002.

Respectfully submitted,
Rosemary Simota Thompson,
Trial Attorney, U.S. Department of Justice, Antitrust Division, Chicago Field Office, 209 S. La Salle St., Suite 600, Chicago, Illinois 60604, (312) 353–7530, (312) 353–1046 (Fax), rosemary.thompson@usdoj.gov (E-mail).

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. The Manitowoc Co. Inc., Grove Investors Inc., and National Crane Corp.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *The Manitowoc Co. Inc., Grove Investors Inc., and National Crane Corp.,* Civil No. 02 CV 01509 (RCL).

On July 31, 2002, the United States filed a Complaint alleging that the proposed acquisition by Manitowoc of Grove would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in development, production, and sale of medium- and heavy-lift boom trucks in North America. The proposed Final Judgment, filed the same time as the Complaint, requires that the defendants divest either Manitowoc's or Grove's boom truck business to a person acceptable to the United States within 150 days after July 31st. Copies of the Complaint, the proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impacts

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[1] 119 Cong. Rec. 24,598 (1973). See United States v. Gillette Co., 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in 1974 U.S.C.C.A.N. 6535, 6538.

[2] *United States* v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D.Mo. 1977); see also *United States* v. *Loew's Inc.,* 783 F. Supp. 211, 214 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Mgmt., Inc.,* 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

[3] *United States* v. *Bechtel Corp.,* 648 F.2d at 666 (citations omitted) (emphasis added); see *United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Boardcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 716. See also *United States* v. *Amerian Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

[4] *United States* v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982), (quoting *United States* v. *Gillette,* 406 F. Supp. at 716), aff'd sub nom. *Maryland* v. *United States,* 460 U.S. 1001 (1983); see *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985); *United States* v. *Carrols Dev. Corp.,* 454 F. Supp. 1215, 1222 (N.D.N.Y. 1978).

Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW, Washington, DC 20004 (telephone: 202/514–2692), and at the Clerk's Office of the U.S. Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001 .

Public comment is invited within 60-days of the date of this notice. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: (202) 307–0924).

Dorothy B. Fountain,

Deputy Director of Operations.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. ''Acquire'' means the entity or entities to whom defendants divest the National Crane or Manitowoc Boom Truck Business.

B. ''Manitowoc'' means defendant The Manitowoc Company, Inc., a Wisconsin corporation with its headquarters in Manitowoc, WI, its successors and assigns, and its subsidiaries (including Manitowoc Boom Trucks, Inc.), divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Grove'' means Investors, Inc., a Delaware corporation with its headquarters in Shady Grove, PA, and its successors and assigns, it subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

D. ''National Crane'' means National Crane Corporation, a Delaware corporation with its headquarters in Waverly, NE, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

E. ''Boom truck'' means any stiff boom telescopic crane designed for mounting on a commercial truck chassis fitted with outriggers for load lift stability.

F. ''Manitowoc Boom Truck Business'' means Manitowoc Boom Trucks, Inc. and its line of boom trucks, including:

1. Any and all tangible assets used in Manitowoc's boom truck manufacturing business, including Manitowoc's boom truck production facility in Georgetown, Texas; manufacturing, assembling and testing equipment, tooling, and other fixed assets; personal property, inventory, office furniture, materials, supplies, and other tangible property and all other assets used exclusively in connection with the Manitowoc Boom Truck Business; all license, permits, and authorizations issued by any governmental entity or organization in connection with making or selling boom trucks; all contracts, supply or teaming arrangements, leases, commitments, and understandings relating to the Manitowoc Boom Truck Business; all customer lists, accounts, and credit records of boom truck distributors, dealers, or end users; and sales, performance, service and repair, warranty, or other records relating to the Manitowoc Boom Truck Business; and

2. Any and all intangible assets used in developing, producing, selling, repairing or servicing Manitowoc, Manitex, USTC, JLG or Pioneer boom trucks, including but not limited to: (a) The Manitex, USTC, JLG and Pioneer brand names and all other intellectual property rights used exclusively in connection with the Manitowoc Boom Truck Business; (b) with respect to all other intellectual property rights (except the use of the Manitowoc brand name) used in connection with both the Manitowoc assets, a transferable, paid-up license, exclusive in the boom truck field use; (c) with respect to use of the Manitowoc brand name, at Acquirer's option, subject to approval of the United States, at its sole discretion, a transferable, paid-up license, not to exceed three years in length, exclusive in the boom truck field of use; (d) all existing licenses and sublicenses relating exclusively to the Manitowoc Boom Truck Business; and (e) a transferable, paid-up sublicense, exclusive in the boom truck field of use, to all other existing licenses and sublicenses relating to the Manitowoc Boom Truck Business. Intellectual property rights, as used herein, include, but are not limited to, patents, licenses and sublicenses, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, quality assurance and control procedures, design tools and stimulation capability, manuals, and all data concerning historic and current research and development relating to the Manitowoc Boom Truck Business.

Manitowoc Boom Truck Business, as used herein, does not include the right to develop, produce or sell Model S282, a mobile self-erecting tower crane licensed by Manitowoc from a foreign subsidiary, Potain.

G. ''National Crane Booth Truck Business'' means National Crane and its line of boom trucks, including:

1. Any and all tangible assets used in National Crane's boom truck manufacturing business, including its boom truck production facility in Waverly, Nebraska; manufacturing, assembling and testing equipment, tooling and other fixed assets; personal property, inventory, office furniture, materials, supplies, and other tangible property and all other assets used exclusively in connection with the National Crane Boom Truck Business; all licenses, permits, and authorizations issued by any governmental entity or organization in connection with making or selling boom trucks; all contracts, supply or teaming arrangements, leases, commitments, and understandings relating to the National Crane Boom Truck Business; all customer lists, accounts, and credit records of boom truck distributors, dealers, or end users; and sales, performance, service and repair, warranty, or other records relating to the National Crane Boom Truck Business; and

2. Any and all intangible assets used in developing, producing, selling, repairing, or servicing National or National Crane brand boom trucks, including but not limited to: (a) The National Crane and National brand names and all other intellectual property rights used exclusively in connection with the National Crane Boom Truck Business; (b) with respect to all other intellectual property rights used in connection with both the National Crane Boom Truck Business and other nondivested Grove assets, a transferable, paid-up license, exclusive in the boom truck field of use; (c) all existing licenses and sublicenses relating exclusively to the National Crane Boom Truck Business; and (d) a transferable, paid-up sublicense, exclusive in the boom truck field of use, to all other existing licenses and sublicenses relating to the National Crane Boom Truck Business. Intellectual property rights, as used herein, include, but are not limited to, patents, licenses and sublicenses, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, quality assurance and control procedures, design tools and simulation capability,

manuals, and all data concerning historic and current research and development relating to the National Crane Boom Truck Business.

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of either the National Crane or Manitowoc Boom Truck Business for the purpose of ensuring the establishment of a viable competitor in the boom truck industry capable of competing effectively to supply boom trucks in North America and to remedy the anticompetitive effects that the United States alleges would otherwise result from Manitowoc's acquisition of Grove. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the National Crane and Manitowoc Boom Truck Businesses are operated as competitively independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by the consummation of Manitowoc's acquisition of Grove, and that competition is maintained during the pendency of the ordered divestiture.

III. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Final Judgment

A. The Parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before (1) the Court has signed this Hold Separate Stipulation and Order and (2) defendants have obtained from their lenders a written unconditional commitment to release any security interest(s) in the assets of the National Crane or Manitowoc Boom Truck Business pursuant to a divestiture under the terms of the Final Judgment.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. Hold Separate Provisions

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendants shall preserve, maintain, and continue to operate, respectively, the National Crane and Manitowoc Boom Truck Businesses as competitively independent, economically viable parts of ongoing competitive businesses, with management, research, design, development, promotions, marketing, sales, and operations of such assets held entirely separate, distinct, and apart from each other's operations and from those of defendants' other operations. Within twenty (20) days after the entry of this Hold Separate Stipulation and Order, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the National Crane and Manitowoc Boom Truck Businesses will be maintained and operated as independent, ongoing, economically viable and active competitors in the boom truck industry; (2) management of the National Crane and Manitowoc Boom Truck Businesses (designated in Section V(J)) will not be influenced by defendants, except to the extent necessary to carry out defendants' obligations under this Hold Separate Stipulation and Order and the proposed Final Judgment; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning research, development, marketing, production, distribution, or sales of products by or under any of the National Crane and Manitowoc Boom Truck Businesses will be kept separate and apart from each other's operations.

C. Defendants shall use all reasonable efforts to maintain and increase the research, development, sales, and revenues of the products produced by or sold under the National Crane and Manitowoc Boom Truck Businesses, and shall maintain at 2001 levels or previously approved levels for 2002, whichever are higher, all research, development, product improvement, promotional, advertising, sales, technical assistance, marketing and merchandising support for the National Crane and Manitowoc Boom Truck Businesses.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the National Crane and Manitowoc Boom Truck Businesses as economically viable and competitive, ongoing businesses, consistent with the requirements of Sections V(A) and V(B).

E. Defendants shall take all steps necessary to ensure that all the assets of the National Crane and Manitowoc Boom Truck Businesses are fully maintained in operable condition at no less than current capacity and sales, and shall maintain and adhere to normal product improvement and upgrade and repair and maintenance schedules for those assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any assets of the National Crane or Manitowoc Boom Truck Businesses; provided, however, that nothing in this provision prohibits defendants from selling inventory in the ordinary course of business or, subject to the terms of Section IV(C)(2), offering a lender a security interest in assets

pursuant to Manitowoc's preexisting revolving lines of credit.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the National Crane and Manitowoc Boom Truck Businesses.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the National Crane and Manitowoc Boom Truck Businesses.

I. Defendants' employees with primary responsibility for the research, design, development, promotion, distribution, sale, and operation of the National Crane and Manitowoc Boom Truck Businesses shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policy. Defendants shall provide the United States with ten (10) calendar days notice of such transfer.

J. Prior to consummation of their transaction, defendants Grove and National Crane shall appoint Dan Wolf to oversee the National Crane Boom Truck Business and defendant Manitowoc shall appoint Brad Rogers to oversee the Manitowoc Boom Truck Business, and to be responsible for defendants' compliance with this section. Dan Wolf shall have complete managerial responsibility for the National Crane Boom Truck Business, and Brad Rogers shall have complete managerial responsibility for the Manitowoc Boom Truck Business, subject to the provisions of this Final Judgment. In the event either person is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to an Acquirer acceptable to the United States.

L. This Hold Separate Stipulation and order shall remain in effect until consummation of the divestiture required by the proposed Final Judgment or until further order of the Court.

Dated: July 30, 2002.

Respectfully submitted,

for Plaintiff, United States of America: Anthony E. Harris, Esquire, Illinois Bar No.: 1133713, United States Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, Telephone No.: (202) 307–6583.

For Defendant, the Manitowoc Company, Inc.: Darryl S. Bell, Esquire, Quarles & Brady LLP, 411 East Wisconsin Avenue, Suite 2040, Milwaukee, WI 53202–4497, Telephone No.: (414) 277–5123.

For Defendants, Grove Investors, Inc. and National Crane Corporation: Michael L. Weiner, Esquire, Skadden Arps Slate Meagher & Flom LLP, Four Times Square, New York, NY 10036, Telephone No.: (212) 735–3000.

Order

It is so ordered by the Court, this _____day of July 2002.

_____

United States District Judge

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on July 29, 2002, plaintiff and defendants, The Manitowoc Company, Inc. (''Maintiowoc''), Grove Investors, Inc. (''Grove''), and National Crane, Inc. (''National Crane''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

And Whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the United States that the divestiture required below can and will be made and that defendants will later raise no claim of hardship of difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the entity or entities to whom defendants divest the National Crane or Manitowoc Boom Truck Business.

B. ''Manitowoc'' means defendant The Manitowoc Company, Inc.; a Wisconsin corporation with its headquarters in Manitowoc, WI, its successors and assigns, and its subsidiaries (including Manitowoc Boom Truck, Inc.), divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Grove'' means Grove Investors, Inc., a Delaware corporation with its headquarters in Shady Grove, PA, and its successors and assigns, its subsidiaries, divisions, groups, affiliates, partnerships,joint ventures,and their directors, officers, managers agents, and employees.

D. ''National Crane'' means National crane Corp., a Delaware corporation with its headquarters in Waverly, NE, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

E. ''Boom truck'' means any stiff boom telescopic crane designed for mounting on a commercial truck chassis fitted with outriggers for load lift stability.

F. ''Manitowoc Boom Truck Business'' means Manitowoc Boom Trucks, Inc. and its line of boom trucks, including:

1. Any and all tangible assets used in Manitowoc's boom truck manufacturing business, including Manitowoc's boom truck production facility in Georgetown, Texas; manufacturing, assembling and testing equipment, tooling, and other fixed assets; personal property, inventory, office furniture, materials, supplies, and other tangible property, and all other assets used exclusively in connection with the Manitowoc Boom Truck Business; all licenses, permits, and authorizations issued by any governmental entity or organization in connection with making or selling boom trucks; all contracts, supply or teaming arrangements, leases, commitments, and understandings relating to the Manitowoc Boom Truck Business; all

customers lists, accounts, and credit records of boom truck distributors, dealers or end users; and sales, performance, service and repair, warranty or other records relating to the Manitowoc Boom Truck Business; and

2. Any and all intangible assets used in developing, producing, selling, repairing or servicing Manitowoc, Manitex, USTC, JLG or Pioneer boom trucks, including but not limited to: (a) The Manitex, USTC, JLG and Pioneer brand names and all other intellectual property rights used exclusively in connection with the Manitowoc Boom Truck Business; (b) with respect to all other intellectual property rights (except the use of the Manitowoc brand name) used in connection with both the Manitowoc Boom Truck Business and other nondivested Manitowoc assets, a transferable, paid-up license, exclusive in the boom truck field of use; (c) with respect to use of the Manitowoc brand name, at Acquirer's option, subject to approval of the United States, at its sole discretion, a transferable, paid-up license, not to exceed three years in length, exclusive in the boom truck field of use; (d) all existing licenses and sublicenses relating exclusively to the Manitowoc Boom Truck Business; and (e) a transferable paid-up sublicense, exclusive in the boom truck field of sue, to all other existing licenses and sublicenses relating to the Manitowoc Boom Truck Business. Intellectual property rights, as used herein, include, but are not limited to, patents, license and sublicenses, technical information, computer software and related documentation, known-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, quality assurance and control procedures, design tools and simulation capability, manuals, and all data concerning historic and current research and development relating to the Manitowoc Boom Truck Business.

Manitowoc Boom Truck Business, as used herein, does not include the right to develop, produce or sell Model S282, mobile self-erecting tower crane licensed by Manitowoc from a foreign subsidiary, Potain.

G. ''National cranes Boom Truck Business'' means National Crane and its line of boom trucks, including:

1. Any and all tangible assets used in national Crane's boom truck manufacturing business, including its boom truck production facility in Waverly, Nebraska; manufacturing, assembling and testing equipment, tooling and other fixed assets; personal property, inventory, office furniture, materials, supplies, and other tangible property and all other assets used exclusively in connection with the National Crane Boom Truck Business; and licenses, permits and authorizations issue by any governmental entity or organization in connection with making or selling boom trucks; all contracts, supply or teaming arrangements, leases, commitments and understandings relating to the National Crane Boom Truck Businesses; all customer lists, accounts, and credit records of boom truck distributors, dealers or end users; and sales, performance, service and repair, warranty or other records relating to the National crane Boom Truck Business; and

2. Any and all intangible assets used in developing, producing, selling, repairing or servicing National or National Crane brand boom trucks, including but not limited to: (a) The National Crane and National brand names and all other intellectual property rights used exclusively in connection with the National Crane Boom Truck Business; (b) with respect to all other intellectual property rights used in connection with both the national crane Boom Truck Business and other nondivested Grove asses, a transferable, paid-up license, exclusive in the boom truck field of use; (c) all existing licenses and sublicenses relating exclusively to the National Crane Boom Truck Business; and (d) a transferable, paid-up sublicense, exclusive in the boom truck field of use, to all other existing licenses and sublicenses relating to the National Crane Boom Truck Business. Intellectual property rights, as used herein, include, but are not limited to, patents, licenses and sublicenses, technical information, computer software and related documentation, known-how, trade secrets, drawing, blueprints, designs, design protocols, specifications for materials, quality assurance and control procedures, design tools and simulation capability, manuals, and all data concerning historic and current research and development relating to the National Crane Boom Truck Business.

III. Applicability

A. This Final Judgment applies to Manitowoc, Grove and National Crane, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their asserts or of lesser business units that include the National Crane or Manitowoc Boom Truck Business, that the purchaser agrees to be bound by the provisions of this Final Judgment, provided, however, that defendants need not obtain such an agreement from the Acquirer.

IV. Divestiture

A. Defendants are ordered and directed, within one hundred and fifty (150) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the National Crane or Manitowoc Boom Truck Business in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to thirty (30) calendar days, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the National Crane or Manitowoc Boom Truck Business as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the National Crane or Manitowoc Boom Truck Business, whichever is then available for sale. Defendants shall inform any person making inquiry regarding a possible purchase of the National Crane or Manitowoc Boom Truck Business that either will be divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the National Crane or Manitowoc Boom Truck Business, whichever, is then available for sale, customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide prospective Acquirers of the National Crane or Manitowoc Boom Truck Business and the United States information relating to the personnel involved in the production, operation, development and sale of the National Crane or Manitowoc Boom Truck Business (whichever is then available for sale) to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any defendants employee whose primary responsibility

is the production, operation, development and sale of the boom truck products of the National Crane or Manitowoc Boom Truck Business.

D. Defendants shall permit prospective Acquirers of the National Crane or Manitowoc Boom Truck Business to have reasonable access to personnel and to make inspections of the physical facilities of the National or Manitowoc Boom Truck Business (whichever is then available for sale); access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer of the National Crane or Manitowoc Boom Truck Business that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the National Crane and Manitowoc Boom Truck Businesses.

G. Defendants shall not take any action, direct or indirect, that would prevent or discourage in any way any dealer from distributing the boom truck products of the National Crane or Manitowoc Boom Truck Business, whichever is actually divested, for a period of two years after such divestiture. Nothing in this provision, however, shall prevent defendants from promoting and selling in the ordinary course of business products that compete with the National Crane or Manitowoc Boom Truck Business.

H. Defendants shall warrant to the Acquirer of the National Crane or Manitowoc Boom Truck Business that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and the following the sale of the National Crane or Manitowoc Boom Truck Business, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the National Crane or Manitowoc Boom Truck Business.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire National Crane or Manitowoc Boom Truck Business, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the National Crane or Manitowoc Boom Truck Business can and will be used by the Acquirer as part of a viable, ongoing business, engaged in developing, manufacturing and selling boom trucks in North America. Divestiture of the National Crane or Manitowoc Boom Truck Business may be made to an Acquirer, provided that it is demonstrated to the sole satisfaction of the United States that the National Crane or Manitowoc Boom Truck Business will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, which pursuant to Section IV or Section V of this Final Judgment,

1. Shall be made to an Acquirer that, in the United State's sole judgment, has the managerial, operational, and financial capability to compete effectively in the manufacturer and sale of boom trucks in North America; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If defendants have not divested the National Crane or Manitowoc Boom Truck Business within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of either the National Crane or Manitowoc Boom Truck Business.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the National Crane or Manitowoc Boom Truck Business. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as plaintiff approves, and shall account for all monies derived from the sale of the National Crane or Manitowoc Boom Truck Business and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the National Crane or Manitowoc Boom Truck Business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to customary confidentiality protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the National Crane and Manitowoc Boom Truck Businesses and shall describe in detail each contact with any such person. The trustee shall maintain full records of all

efforts made to divest the National Crane and Manitowoc Boom Truck Business.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the National or Manitowoc Boom Truck Business, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(D) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(D), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture order by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the National Crane or Manitowoc Boom Truck Business, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the National Crane and Manitowoc Boom Truck Businesses, and to provide required information to any prospective Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on the information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve the National Crane and Manitowac Boom Truck Businesses and to divest the National Crane or Manitowoc Boom Truck Business until one year after such divestiture has been completed.

X. Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. Access during defendants' office hours to inspect and copy, or at plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if

requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the National Crane or Manitowoc Boom Truck Assets, whichever is divested, during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, an to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On July 30, 2002, the United States filed a civil antitrust suit alleging that the proposed acquisition by The Manitowoc Company, Inc. (''Manitowoc'') of Grove Investors, Inc. (''Grove'') would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Complaint alleges that a combination of Manitowoc and Grove would substantially lessen competition in the development, production, and sale of medium- and heavy-lift boom trucks in North America. Combining Grove and Manitowoc, the largest and third largest producers of medium- and heavy-lift boom trucks, would result in a single firm—Manitowoc—with a market share of over 60 percent, and two firms with a combined share of over 90 percent, of North American sales of medium- and heavy-lift boom trucks. This reduction in competition would lead to higher prices and reduced product quality and innovation for medium- and heavy-lift boom trucks to the detriment of consumers. Accordingly, the prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act, and (2) a permanent injunction that would prevent Manitowoc from acquiring control of or otherwise combining its assets with Grove and its boom truck subsidiary, National Crane Corp.

At the same time the Complaint was filed, the United States filed a proposed settlement that would permit Manitowoc to complete its acquisition of Grove, but require defendants to divest either Manitowoc's or Grove's boom truck business in such a way as to preserve competition in North America. The settlement consists of a Hold Separate Stipulation and Order and a proposed Final Judgment.

According to the terms of the settlement, defendants must divest either Manitowoc's or Grove's boom truck business to a person acceptable to the United States, in its sole discretion, within one hundred and fifty (150) calendar days after the filing of the Complaint in this matter, or within five (5) days after notice of entry of the Final Judgment, whichever is later. The United States, in its sole discretion, may extend the time period for divestiture by an additional period of time, not to exceed 30 days. If defendants do not complete the divestiture within the prescribed time period, then the United States may nominate, and the Court will appoint, a trustee who will have sole authority to divest either the National Crane or the Manitowoc boom truck business.

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the APPA. Entry of the proposed Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violations of the Antitrust Laws

A. The Defendants and the Proposed Transaction

Manitowoc, based in Manitowoc, WI, is a publicly held conglomerate with three principal lines of business: Production and sale of commercial refrigeration equipment, construction and repair of lake-going freighters, and production and sale of various types of stationary and mobile cranes. In 2001, Manitowoc reported approximately $1.2 billion in total revenues.

Grove makes and sells all types of mobile cranes, including hydraulic truck-mounted, all-terrain, and rough-terrain cranes. A Grove subsidiary, National Crane, makes boom trucks and knuckleboom cranes. In 2001, Grove reported revenues in excess of $713 million.

On March 19, 2002, Manitowoc and Grove announced an agreement pursuant to which Manitowo would acquire Grove and assume its liabilities in a transaction valued at approximately $270 million. This transaction would combine the nation's largest and third largest producers of medium- and heavy-lift boom trucks, and in the process, substantially lessen competition in the already highly concentrated North American market for medium- and heavy-lift boom trucks.

B. The Effects of the Transaction on Competition in the Sale of Medium- and Heavy-Lift Boom Trucks

1. Relevant Market: North American Production and Sale of Medium- and Heavy-Lift Boom Trucks

The Complaint alleges that the development, production, and sale of medium- and heavy-lift boom trucks is a relevant product market within the meaning of Section 7 of the Clayton Act, A ''boom truck'' is a stiff boom telescopic crane mounted on a standard flat-bed commercial truck chassis. This general-purpose mobile crane has a

broad range of applications in the construction, petroleum, and utility industries. Although boom trucks are produced in many models and sizes, their nominal load lift ratings generally distinguish them as either light-, medium-, or heavy-lift cranes. A combination of highly desirable features sets medium- and heavy-lift boom trucks apart from all other types of cranes or lifting devices. These features include an ability safely to haul loads and travel at highway speeds from site to site, exceptional load lift (from 15 tons to 40 tons) and reach (40 feet to over 100 feet) capability, overall versatility, and general ease of use.

Medium- and heavy-lift boom trucks offer an appealing package of versatility and performance at attractive prices—a combination unmatched by any other type of crane (*e.g.,* knuckleboom, hydraulic truck, all-terrain, rough-terrain, tower, and lattice boom cranes; service vehicles; or boom trucks with lower nominal lift rating capability) or lifting device (*e.g.,* fork-lift trucks, aerial manlift vehicles). For that reason, prospective customers would be willing to pay a significant premium over current prices before seriously considering any other type of crane or lifting device. Medium- and heavy-lift boom trucks are a relevant product market in which to assess the competitive effects of a combination of Manitowoc and Grove.[1]

The Complaint alleges that the sale of medium- and heavy-lift boom trucks in North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act. Over 99 percent of medium- and heavy-lift boom trucks sold in North America are produced by firms located in either the United States or Canada. Although a very few medium-lift boom trucks have been imported from a single firm in Japan, historically, foreign producers have not developed and produced a sufficiently wide range of different models of boom trucks, and have not established a reputation for quality, safety, and reliability or the extensive distribution networks that would enable them to attract significant sales of medium- and heavy-lift boom trucks away from North American firms. A small but significant and nontransitory increase in prices of North American medium- or heavy-lift boom trucks would not precipitate a significant loss of sales to imported products. North America this is a relevant geographic market in which to assess the competitive effects of Manitowoc's proposed acquisition of Grove.

2. Anticompetitive Effects of the Acquisition

The Complaint alleges that in this highly concentrated market for medium- and heavy-lift boom trucks, a combination of Manitowoc and Grove likely would; (i) Substantially lessen competition in development, production, and sale of medium- and heavy-lift boom trucks in North America, (ii) eliminate actual and potential competition between Manitowoc's and Grove's medium- and heavy-lift boom truck businesses; and (iii) increase prices and reduce current levels of quality and innovation for medium- and heavy-lift boom trucks.

Specifically, the Complaint alleges that Grove (via National Crane) and Manitowoc are, respectively, the nation's largest and third largest producers of medium- and heavy-lift boom trucks. There is only one other major producer of medium- and heavy-lift boom trucks. Combined, the three largest competitors command over 90 percent of all sales of medium- and heavy-lift boom trucks in North America. Three small firms (two North American and one Asian) produce somewhat specialized products that account for less than ten percent of unit sales of medium- and heavy-lift boom trucks in North America. Individually and collectively, however, these small firms do not have the production capacity, strong reputation for safety and reliability, or extensive distribution networks necessary to attract sufficient sales away from the much larger market incumbents, and hence effectively constrain any post-merger exercise of market power.[2]

Manitowoc's acquisition of Grove is likely to diminish competition substantially by creating conditions conducive to: (a) The two remaining major competitors engaging in tacit or explicit coordinated pricing to the detriment of consumers since neither would have to worry about competition from Grove; and (b) Manitowoc unilaterally increasing its prices for medium- and heavy-lift boom trucks.

Significant new entry into development, production and sales of medium- and heavy-lift boom trucks would be difficult, time consuming, and hence unlikely to deter (or constrain) an exercise of market power after the acquisition by Manitowoc of Grove. To be successful in this industry, a new competitor[3] must not only construct a production facility and establish a large network of dealers to provide sales, service, and customer support for its products, it must also develop a strong reputation for producing high quality, safe, and reliable boom trucks. Successful new entry would require a substantial capital investment in the form of sunk costs,[4] which would be large relative to the size of the North American boom truck industry and the risk of any expected profits. Considering the time required, expense, investment risks, and expected returns, it is highly unlikely that following a combination of Manitowoc and Grove, new market entry would occur on such a magnitude and scale as to displace sufficient sales from the two remaining major incumbent producers of medium- and heavy-lift boom trucks to constrain a post-merger exercise of market power.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will preserve competition in the sale of medium- and heavy-lift boom trucks in North America. The Judgment requires that within one hundred and fifty (150) calendar days after the filing of the Complaint in this matter, or within five (5) days after notice of entry of the Final Judgment, whichever is later, Manitowoc must sell its own or Grove's boom truck business to an acquirer acceptable to the United States. The United States may extend this time period for divestiture for one additional period, not to exceed 30 days. Defendants must use their best efforts to divest either the Manitowoc or Grove boom truck business as expeditiously as possible, and until the ordered divestiture takes place, the defendants must cooperate with any prospective purchasers.

If Manitowoc does not accomplish the ordered divestiture within the

[1] The basic competitive analysis (*i.e.,* three to two reduction in major competitors in an already highly concentrated market) would not change appreciably if one were to examine individual models by load lift capability (concluding perhaps that models within a certain range of load lift capability comprise a relevant product, *e.g.,* 15–17 ton boom trucks), rather than, as in this case, considering larger boom trucks collectively as a single market for ''medium and heavy lift boom trucks.''

[2] These small rivals would be unable to quickly and easily expand their sales of medium- and heavy-lift boom trucks for many of the same reasons why significant new entry would be difficult, time-consuming and unlikely, post-merger. *See* p. 7, below.

[3] Entry into the production and sale of medium- and heavy-lift boom trucks may be de novo (*i.e.,* by a new producer) or lateral (*e.g.,* by an established maker of other types of cranes or lifting devices).

[4] The term ''sunk costs'' as used in this context includes the costs of acquiring tangible and intangible assets that cannot be recovered through the redeployment of these assets outside the relevant market, *i.e.,* costs uniquely incurred to enter the production and sale of medium- and heavy-lift boom trucks in North America and that cannot be recovered upon exit from that industry.

prescribed time period, the United States will nominate, and the Court will appoint, a trustee to assume sole power and authority to complete the divestiture. Defendants must cooperate fully with the trustee's efforts to divest either boom truck business to an acquirer acceptable to the United States and periodically report to the United States on their divestiture efforts.

If the trustee is appointed, the defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is completed. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate to carry out the purpose of the trust, including extending the trust and the term of the trustee's appointment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the brining of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Manitowoc and Grove. The United States could have continued the litigation to seek preliminary and permanent injunctions against Manitowoc's acquisition of Grove. The United States is satisfied, however, that the divestiture of the assets as proposed in the Final Judgment will establish, preserve, and ensure competition in the relevant market. To this end, the United States is convinced that the proposed relief, once implemented by the Court, will prevent Manitowoc's acquisition of Grove from having adverse competitive effects.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court *may* consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added) As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [5] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 CCH Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981); *see also Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *''within the reaches*

[5] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). As ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[6]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A]'' proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is within the reaches of public interest.' '' [7]

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Since the ''court's authority to review the decree depends entirely on the Government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that the Court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. *Id.*

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 30, 2002.

Respectfully submitted,

Anthony E. Harris,
Illinois Bar No. 1133713, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530, (202) 307–6583.

[FR Doc. 02–21350 Filed 8–21–02; 8:45 am]
BILLING CODE 4410–11–M

[6] *United States* v. *Bechetel,* 648 F.2d at 666 (citations omitted) (emphasis added); see *United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.,* 719 F.2d at 565.

[7] *United States* v. *American Tel. and Tel. Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982) (citations omitted), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983) *quoting United States Gillette Co., supra.* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky 1985).

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

AGENCY: 60-day emergency notice information collection under review: new collection; financial status report (SF 269A).

The Department of Justice, Office of Justice Programs, Office of the Comptroller, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by August 30, 2002. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulations Affairs, Attention: Department of Justice Desk Officer, (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Cynthia J. Schwimer, Comptroller, (202) 307–0623, Office of the Comptroller, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531, or facsimile at (202) 307–1463.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(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, including the validity of the methodology and assumptions used;

(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, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

1. *Type of information collection:* New collection.

2. *The title of the form/collection:* Financial Status Report (SF 269A).

3. *The agency for number, if any, and the applicable component of the department sponsoring the collection:* Non-applicable.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The form is completed by grant recipients who were awarded grants by the Department of Justice, Office of Justice Programs. It is used as an aid for grant recipients to report the status of their expenditures.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The estimated total number of respondents are 11,292, and the estimated time to complete the form is one and a half hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 67,752 hours annual burden associated with this information collection.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: August 16, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–21380 Filed 8–21–02; 8:45 am]
BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: reinstatement, with change, of a previously approved collection for which approval has expired; Accounting System and Financial Capability Questionnaire.

The Department of Justice (DOJ), Office of Justice Programs has submitted

the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 67, Number 104, page 37867 on May 30, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 23, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(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, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, With Change, of a Previously Approved Collection for Which Approval has Expired.

(2) *Title of the Form/Collection:* Accounting System and Financial Capability Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: OJP Form 7120/1. Office of Justice Programs, US Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary, Not-for-profit institutions. Other: For-profit institutions. This form will be completed by applicants that are newly-formed firms or established firms with no previous grants awarded by the Office of Justice Programs. It is used as an aide to determine those applicants/grantees that may require special attention in matters relating to the accountability of Federal funds. This information is required for assessing the financial risk of a potential recipient in administrating federal funds in accordance with OMB Circular A–110 and 28 CFR part 70.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 100 respondents will complete a 4-hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 400 annual total burden hours associated with this collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 16, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–21381 Filed 8–21–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 15, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Darrin King (202) 693–4129 or *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: PY 2002 Workforce Information Grant Plan and Annual Performance Report.

OMB Number: 1205–0417.

Frequency: Annually.

Affected Public: State, Local, or Tribal Government; Federal Government.

Number of Respondents: 54.

Estimated Time Per respondent: The Annual Plan is 65 hours, the Customer Satisfaction information is 642 hours, and the Annual Report is 57 hours.

Total Burden Hours: 41,256 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Department of Labor is requesting OMB approval to require States to submit additional narrative in the annual grant plan, to assess customer satisfaction with State workforce information and to include summary of the results of customer satisfaction assessment in an annual performance report, as conditions for

receiving Workforce Information Core Products and Services reimbursable grants.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–21406 Filed 8–21–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 8, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: Longshoring and Marine Terminal Operations—29 CFR parts 1917 and 1918.

OMB Number: 1218–0196.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government; and Federal Government.

Frequency: Initially, on occasion, weekly, monthly, and annually.

Type of Response: Recordkeeping and third-party disclosure.

Number of Respondents: 748.

Number of Annual Responses: 149,670.

Average Time Per Response: Varies from 2 minutes to post a warning sign to 8 hours to mark a flat bed and low boy trailer with their cargo capacity.

Total Burden Hours: 36,688.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 29 CFR parts 1917 and 1918 contain a number of collections of information requirements which are used by employers to ensure that employees are informed properly about the safety and health hazards associated with marine terminal and longshoring operations. These standards contain requirements related to the testing, certification and marking of specific types of cargo lifting appliances and associated cargo handling gear and other cargo handling equipment such as conveyors and industrial trucks. The collections of information required from employers by OSHA are necessary to reduce employee injuries and fatalities associated with cargo lifting gear, transfer of vehicular cargo, manual cargo handling, and exposure to hazardous atmospheres. The Agency uses the records developed in response to a number of the information collection requirements to find out if employers are complying adequately with the provisions of the standards.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–21407 Filed 8–21–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 8, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1996 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Office for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: Derricks—29 CFR 1910.181.

OMB Number: 1218–0222.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government; and Federal Government.

Frequency: On occasion and Monthly.

Type of Response: Recordkeeping and Third-party disclosure.

Number of Respondents: 10,000.

Number of Annual Responses: 115,000.

Average Time Per Response: Varies from 3 minutes (.05 hour) to post or keep information to 15 minutes (.25 hour) to inspect rope and to prepare, maintain, and disclose a certification record.

Total Burden Hours: 28,550.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 29 CFR 1910.181, the Derricks Standard, specifies two paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purposes of these requirements is to prevent death and serious injuries to employees by ensuring that the derrick is not used to lift loads beyond its rated capacity and that all the ropes are inspected for wear and tear.

Paragraph (c)(1) requires that for permanently installed derricks a clearly legible rating chart be provided with each derrick and securely affixed to the derrick. Paragraph (c)(2) requires that for non-permanent installations, the manufacturer provide sufficient information from which capacity charts can be prepared by the employer for the particular installation. The capacity charts must be located at the derrick or at the jobsite office. The data on the capacity charts provide information to the employees to assure that the derricks are used as designed and not overloaded or used beyond the range specified in the charts.

Paragraph (g)(1) requires employers to thoroughly inspect all running rope in use, and to do so at least once a month. In addition, before using rope, which has been idle for at least a month, it must be inspected as prescribed by paragraph (g)(3) and a record prepared to certify that the inspection was done. The certification records must include the inspection date, the signature of the person conducting the inspection, and the identifier of the rope inspected. Employers must keep the certification records on file and available for inspection. The certification records provide employers, employees, and OSHA compliance officers with assurance that the ropes are in good condition.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–21408 Filed 8–21–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

Temporary Extended Unemployment Compensation Program Reports; Correction

ACTION: Correction.

SUMMARY: In notice document 02–20611 beginning on page 53023 in the issue of Wednesday, August 14, 2002, make the following correction:

On page 53023 on the second line of the third column, the OMB Control number previously listed as 1205–0009 should be changed to 1205–0433.

Dated: August 16, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 02–21405 Filed 8–21–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–10959]

Prohibited Transaction Exemption 2002–37; et al.; Grant of Individual Exemptions; Adams Wood Products, Inc. Profit Sharing Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Adams Wood Products, Inc. Profit Sharing Plan (the Plan), Located in Morristown, Tennessee

[Prohibited Transaction Exemption 2002–37; Exemption Application No. D–10959]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) a non-interest bearing loan (the Loan) by Adams Wood Products, Inc. (AWP), the Plan sponsor, to the Plan to reimburse the Plan for losses incurred concerning past investments by the Plan in certain promissory notes (the Notes); and (2) the potential repayment by the Plan to AWP of certain moneys if the Plan recovers any of the investments in the Notes. This exemption is subject to the following conditions:

(a) The Plan pays no interest nor incurs any other expense relating to the Loan;

(b) The amount of the Loan includes the following:

(1) $340,187.38, which represents the amount due on the consolidated note (the Consolidated Note) on June 30, 2000;

(2) opportunity costs as follows: (a) the amount due on the Consolidated Note from June 30, 2000, the last date when the Plan received interest on the Consolidated Note to January 26, 2001, the date when AWP placed funds in Certificates of Deposit (CDs); and (b) an additional amount yet to be determined to provide the Plan with an identical rate of return as AWP received as a result of AWP's investment in the CDs for the period between January 26, 2001

and the date the Plan receives the Loan amount; and

(3) $4,630.84 to reimburse the Plan for all interest on the 1st note and 2nd note, due respectively, on April 20, 2001 and April 15, 2002; and

(c) Any repayment by the Plan is restricted solely to the amount, if any, recovered by the Plan with respect to the Loan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on June 6, 2002 at 67 FR 39051.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

Unifi, Inc. Retirement Savings Plan (the Plan), Located in Greensboro, North Carolina

[Prohibited Transaction Exemption 2002–38; Exemption Application No. D–11094]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the prospective cash sale of a certain parcel of improved real property (the Property) by the Plan to Unifi, Inc. (Unifi), the Plan's sponsor and, as such, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) the sale is a one-time cash transaction;

(b) the Plan receives the greater of: (i) $7,500,000; or (ii) fair market value for the Property, as established by an independent qualified appraiser at the time of the sale;

(c) the Plan pays no commissions or other expenses associated with the sale; and

(d) the applicant files Form 5330 with the Internal Revenue Service and pays all of the appropriate excise taxes with regard to the past and continuing lease of the Property (the Lease) by the Plan to Unifi [1] within 60 days of the date that this exemption is published in the **Federal Register**.

For a more complete statement of the facts and representations supporting the Department of Labor's (the Department) decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published in the **Federal Register** on June 6, 2002 at 67 FR 39062.

[1] See Prohibited Transaction Exemption 87–28 (PTE 87–29, 52 FR 8380, Mach 17, 1987) with regard to the Lease.

Written Comments

The Department received one written comment (the Comment) with respect to the Notice and no requests for a hearing. The Comment was filed by legal counsel for Wachovia Bank, N.A. (Wachovia). The Comment responds to certain statements concerning Wachovia's conduct as the independent fiduciary for the Lease under PTE 87–28. These statements were made in the exemption application filed by Unifi (the Application) and in the Notice. PTE 87–28 permitted the Lease, pursuant to the terms and conditions contained therein, until its expiration. The Lease expired, by its terms, on March 12, 2002. Wachovia was the designated independent fiduciary for the Plan in the transaction.

The Comment was subsequently sent by the Department to Unifi for their response. Set forth below are the points made by Wachovia together with responses to those points made by Unifi.

I. Discussion of Wachovia's Comment

Paragraph 2 of the Summary of the Facts and Representations (the Summary) contained in the Notice states, in relevant part, that the applicant maintains that all terms and conditions of PTE 87–28 have been met. The applicant, however, makes no representation as to whether Wachovia fulfilled all of its obligations as the independent fiduciary under PTE 87–28.

In the Comment, Wachovia states that in a letter dated May 7, 2002 to counsel for Unifi, a copy of which was provided to the Department, they discussed certain business relationships between Unifi and Wachovia's banking department and certain Wachovia affiliates. For the reasons set forth in that letter, Wachovia states again for the record that it has at all times performed all its obligations as independent fiduciary with respect to the Lease under PTE 87–28.

Paragraph 2 of the Summary also states that the applicant represents that Wachovia, as the independent fiduciary for the Lease under PTE 87–28, unilaterally elected to cease functioning as the independent fiduciary for the Plan effective on or before March 13, 2002. Therefore, as of that date, Unifi states that it was engaging in a prohibited transaction under the Act by continuing the Lease, pursuant to a holdover provision contained therein.

In the Comment, Wachovia responds that it was Unifi's continuation of the Lease that caused Unifi to engage in a prohibited transaction with the Plan. Wachovia informed Unifi that the Department likely would require, as a condition to any exemption providing retroactive relief for continuation of the Lease after the original termination date, that an independent fiduciary represent the Plan at all times after the expiration of the Lease. Wachovia identified potential successor independent fiduciaries with whom Unifi engaged in discussions. However, Wachovia states that Unifi failed to reach an agreement with any of them.

Additionally, the Comment contains Wachovia's clarifications on certain statements contained in the Application. In a letter dated May 20, 2002, counsel to Unifi stated to the Department that Unifi is contemplating legal action against Wachovia, in which Unifi would allege that Wachovia failed to locate a suitable tenant for the Property upon termination of the Lease as required by paragraph 2(b)(v) of the independent fiduciary agreement (the I/F Agreement), therefore causing monetary damages to Unifi.

In the Comment, Wachovia clarifies that Wachovia worked with Unifi to find a purchaser for the Property, and identified two potential buyers. Unifi indicated in these sales negotiations that it intended to lease the Property after it was sold. These sales negotiations were terminated when Unifi rejected the terms of a proposed future lease. Unifi has acknowledged that these negotiations were consistent with Wachovia's duties as the independent fiduciary. After negotiations with potential buyers terminated, Wachovia assisted Unifi in applying for an extension of Unifi's existing exemption (*i.e.,* PTE 87–28).

In the Application, Unifi represented to the Department that Wachovia is refusing to perform its services under the I/F Agreement dated September 3, 1996, between Wachovia and Unifi.

In the Comment, Wachovia states that as indicated in Wachovia's letter to Unifi dated March 11, 2002, Unifi was aware that Wachovia was not prepared to continue to serve as the independent fiduciary, and Unifi's representatives apparently concurred with that decision. Again, Wachovia represents that it assisted Unifi in finding potential successor independent fiduciaries, but Unifi failed to reach agreement with any of them.

In summary, Wachovia states that it met all its obligations as the independent fiduciary for the Plan with respect to the Lease. Wachovia maintains that all terms and conditions of PTE 87–28 relating to its duties and responsibilities as the independent fiduciary for the Plan were satisfied.

II. Discussion of Unifi's Response to the Comment

In its response to the Comment (the Response), Unifi states that the Comment made by Wachovia does not discuss the substance of the proposed sale of the Property by the Plan to Unifi, which is the subject transaction in the Notice.

The Response further states that the reason Unifi mentioned Wachovia in the Application was to clarify to the Department why Unifi, and not Wachovia, was submitting the Application to the Department. Unifi states that apart from Wachovia's status as the independent fiduciary for the Lease under PTE 87–28, Wachovia is not an interested party to the proposed sale.

In conclusion, Unifi states that Wachovia has no real interest in the proposed sale of the Property by the Plan to Unifi. There are no statements in the Comment that are in support or against the terms of the proposed sale. Therefore, Unifi respectfully requests that the Department grant the exemption as proposed.

The Department notes that it is offering no views at this time with regard to either Wachovia's conduct as the independent fiduciary for the Plan for purposes of the Lease, pursuant to PTE 87–28, or Unifi's concerns relating thereto. In this regard, the Department notes that the Comment does not object to the proposed sale of the Property by the Plan to Unifi.

Copies of the letters mentioned above, as well as other relevant correspondence, are available for public inspection and may be obtained by interested persons from the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210. Interested persons should request File No. D–11094 (with respect to the proposed sale of the Property by the Plan to Unifi) and File No. D–11080 (with respect to Unifi's initial exemption request for a continuation of the Lease).

Upon consideration of the entire record, the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of August, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–21431 Filed 8–21–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–39; Exemption Application No. D–11036]

Grant of Individual Exemption To Amend and Replace Prohibited Transaction Exemption (PTE) 85–131, Involving the Watkins Master Trust (the Trust), Located in Atlanta, GA

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of individual exemption to modify and replace PTE 85–131.

SUMMARY: This document contains a final exemption before the Department of Labor (the Department) that amends and replaces PTE 85–131 (50 FR 32333, August 9, 1985). PTE 85–131 is an individual exemption providing relief, since March 29, 1985, for (1) the leasing of certain improved real property by the Trust to Watkins Associated Industries, Inc. (Watkins), a party in interest with respect to the plans (the Plans) participating in the Trust under the terms of a written lease (the New Lease); and (2) the possible cash purchase of the Trust's interest in the property by Watkins.

The final exemption modifies an option to purchase provision in the New Lease by allowing Watkins to acquire the Trust's leasehold interests in a building, the improvements constructed thereon, and in a ground lease on May 8, 2002, instead of at the end of New Lease renewal term on December 31, 2008. In addition, the exemption replaces PTE 85–131, which expired by operation of law upon the consummation of the sale. The exemption affects participants and beneficiaries of, and fiduciaries with respect to the Trust.

EFFECTIVE DATE: This exemption is effective as of May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8556. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 18, 2002, the Department published a notice of proposed exemption in the **Federal Register** at 67 FR 41517 that would amend and replace PTE 85–131. PTE 85–131 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code.

The proposed exemption was requested in an application filed on behalf of the Trust and Watkins,* pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type

* The Department also has under consideration a similar exemption request (D–11038) that was filed on behalf of Wilwat Properties, Inc., a party in interest with respect to the Plans participation in the Trust.

requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

The proposed exemption gave interested persons an opportunity to comment and to request a hearing. In this regard, all interested persons were invited to submit written comments or requests for a hearing on the pending exemption on or before August 2, 2002. All comments were to be made a part of the record.

During the comment period, the Department received one written comment from a participant in the Watkins Associated Industries, Inc. Profit Sharing Plan, who objected to the exemption and requested that no changes be made to his individual account in this Plan. The Department received no requests for a public hearing.

For further information regarding the comment or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11036) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including the written comment received, the Department has decided to grant the exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act, section 4975(c)(2) of the Code, and the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, August 10, 1990), the Department finds that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This exemption is subject to the express condition that the facts and representations set forth in the notice of proposed exemption relating to PTE 85–131 and the proposal underlying this grant notice, accurately describe, where relevant, the material terms of the transaction that was consummated pursuant to this exemption.

Exemption

Under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), the Department hereby amends and replaces PTE 85–131. Accordingly, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective May 8, 2002, to the sale by the Watkins Master Trust (the Trust) of its leasehold interests in certain improved real property, consisting of a building (the Building), the improvements constructed thereon (the Improvements), and a ground lease (the Ground Lease), to Watkins Associated Industries, Inc. (Watkins), a party in interest with respect to the Trust, in connection with an amendment to an option to purchase provision contained in a written lease between the Trust and Watkins, as described in Prohibited Transaction Exemption 85–131 (50 FR 32333, August 9, 1985).

This exemption is subject to the following conditions:

(a) All terms and conditions of the sale were at least as favorable to the Trust as those obtainable in an arm's length transaction with an unrelated party;

(b) The sale was a one-time transaction for cash;

(c) The fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease was determined by qualified, independent appraisers in initial and updated appraisal reports;

(d) The Trust did not pay any real estate fees, commissions, costs or other expenses in connection with the sale;

(e) The Trust received, as consideration for the sale, an amount that was no less than the greater of (1) the fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease; or (2) the Trust's total investment in such property, as of the date of the sale;

(f) In the event the Trust could not obtain a release from the owner of the Ground Lease from its obligations thereunder upon the completion of the sale, Watkins agreed to assume all liabilities under such lease and indemnify the Trust against any liability to the owner of the Ground Lease; and

(g) The Trustee, as the independent fiduciary for the Trust with respect to the sale, determined that such transaction was in the best interest of the Trust and was protective of the participants and beneficiaries of the Trust, and monitored such transaction on behalf of the Trust.

EFFECTIVE DATE: This exemption is effective as of May 8, 2002.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 85–131 and this final exemption, refer to the proposed exemptions and the grant notice which are cited above.

Signed at Washington, DC, this 19th day of August, 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–21432 Filed 8–21–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–40; Exemption Application No. D–11038]

Grant of Individual Exemption To Amend and Replace Prohibited Transaction Exemption (PTE) 90–15, Involving the Watkins Master Trust (the Trust), Located in Atlanta, GA

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of individual exemption to modify and replace PTE 90–15.

SUMMARY: This document contains a final exemption before the Department of Labor (the Department) that amends and replaces PTE 90–15 (55 FR 12967, April 6, 1990). PTE 90–15 is an individual exemption providing relief, since September 20, 1989, for (1) the leasing of office space in a commercial office building (the Building) by the Trust to Wilwat Properties, Inc. (Wilwat), a party in interest with respect to the plans (the Plans) participating in the Trust under the provisions of a written lease (the New Lease); and (2) the possible cash purchase of the Trust's interest in the property by Wilwat.

The final exemption modifies an option to purchase provision in the New Lease by allowing Wilwat to acquire the Trust's leasehold interests in the Building, including the improvements constructed thereon, and the Trust's interest in a ground lease on May 8, 2002, instead of at any time during the final six months of the New Lease renewal term ending on December 31, 2008. In addition, the exemption replaces PTE 90–15, which expired by operation of law upon the consummation of the sale. The exemption affects participants and beneficiaries of, and fiduciaries with respect to the Trust.

EFFECTIVE DATE: This exemption is effective as of May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8556. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 18, 2002, the Department published a notice of proposed exemption in the **Federal Register** at 67 FR 41521 that would amend and replace PTE 90–15. PTE 90–15 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code.

The proposed exemption was requested in an application filed on behalf of the Trust and Wilwat,* pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

The proposed exemption gave interested persons an opportunity to comment and to request a hearing. In this regard, all interested persons were invited to submit written comments or requests for a hearing on the pending exemption on or before August 2, 2002. All comments were to be made a part of the record.

During the comment period, the Department received one written comment from a participant in the Watkins Associated Industries, Inc., Profit Sharing Plan, who objected to the exemption and requested that no changes be made to his individual account in this Plan. The Department received no requests for a public hearing.

For further information regarding the comment or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11038) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the written comment received, the Department has decided to grant the exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act, section 4975(c)(2) of the Code, and the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, August 10, 1990), the Department finds that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This exemption is subject to the express condition that the facts and representations set forth in the notice of proposed exemption relating to PTE 90–15 and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

* The Department also has under consideration a similar exemption request (D–11036) that was filed on behalf of Watkins Associated Industries, Inc., the sponsor of the Trust and a party in interest with respect to the Plans partcipating in the Trust.

Exemption

Under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), the Department hereby amends and replaces PTE 90–15. Accordingly, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective May 8, 2002, to the sale by the Watkins Master Trust (the Trust) of its leasehold interests in certain improved real property, consisting of a building (the Building), the improvements constructed thereon (the Improvements), and ground lease (the Ground Lease), to Wilwat Properties, Inc. (Wilwat), a party in interest with respect to the Trust, in connection with an amendment to an option to purchase provision contained in a written lease between the Trust and Wilwat, as described in Prohibited Transaction Exemption 90–15 (55 FR 12967, April 6, 1990).

This exemption is subject to the following conditions:

(a) All terms and conditions of the sale were at least as favorable to the Trust as those obtainable in an arm's length transaction with an unrelated party;

(b) The sale was a one-time transaction for cash;

(c) The fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease was determined by qualified, independent appraisers in initial and updated appraisal reports;

(d) The Trust did not pay any real estate fees, commissions, costs or other expenses in connection with the sale;

(e) The Trust received, as consideration for the sale, an amount that was no less than the greater of (1) the fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease; or (2) the Trust's total investment in such property, as of the date of the sale;

(f) In the event the Trust could not obtain a release from the owner of the Ground Lease from its obligations thereunder upon the completion of the sale, Wilwat agreed to assume all liabilities under such lease and would indemnify the Trust against any liability to the owner of the Ground Lease; and

(g) The Trustee, as the independent fiduciary for the Trust with respect to the sale, determined that such transaction was in the best interest of the Trust and was protective of the participants and beneficiaries of the Trust, and monitored such transaction on behalf of the Trust.

EFFECTIVE DATE: This exemption is effective as of May 8, 2002.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 90–15 and this final exemption, refer to the proposed exemptions and the grant notice which are cited above.

Signed at Washington, DC, this 19th day of August 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–21433 Filed 8–21–02; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–41; Application Number D–11077]

Amendment to Prohibited Transaction Exemption (PTE) 2000–58 Involving Bear, Stearns & Co. Inc., Prudential Securities Incorporated, et al.

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of an amendment to certain of the Underwriter Exemptions.[1]

SUMMARY: This document contains a final exemption issued by the Department of Labor (the Department) which amends certain of the Underwriter Exemptions. The Underwriter Exemptions are individual exemptions that provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (plans) of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The amendment permits the trustee of the trust to be an affiliate of the underwriter of the certificates. The amendment affects the participants and beneficiaries of the plans participating in such transactions and the fiduciaries with respect to such plans.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 22, 2002, notice (the Notice) was published in the **Federal Register** (67 FR 36028) of the pendency before the Department of a proposed exemption

[1] The term ''Underwriter Exemptions'' refers to the following individual Prohibited Transaction Exemptions (PTEs): PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 20545 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); PTE 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 97–34, 62 FR 39021 (July 21, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); PTE 2000–41, 65 FR 51039 (August 22, 2000); and PTE 2000–55 (November 13, 2000).

In addition, the Department notes that it is also granting individual exemptive relief for: Deutsche Bank A.G., New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999); and William J. Mayer Securities LLC, FAN 01–25E (October 15, 2001), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62.

that would amend certain of the Underwriter Exemptions. The Underwriter Exemptions are individual exemptions that provide relief from certain of the prohibited transaction restrictions of sections 406(a), 406(b) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act), as amended, and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), as amended, by reason of certain provisions of section 4975(c)(1) of the Code. All of the Underwriter Exemptions were amended by Prohibited Transaction Exemption 97–34 (62 FR 39021, July 21, 1997) and by Prohibited Transaction Exemption 2000–58 (65 FR 67765, November 13, 2000).

On March 28, 2002, the Department granted a final exemption to J.P. Morgan Chase & Company (J.P. Morgan Chase) which amended three of the Underwriter Exemptions granted to J.P. Morgan Chase and certain of its affiliates.[2] (See PTE 2002–19, 67 FR 14979). The Department subsequently contacted The Bond Market Association, a trade association which represents securities firms and banks that underwrite, trade and sell debt securities, which confirmed that a majority of its members currently possessing Underwriter Exemptions desired the same relief provided to J.P. Morgan Chase under PTE 2002–19. Accordingly, the Department determined to amend the remaining Underwriter Exemptions on its own motion.

The amendment, as proposed, modified the remaining Underwriter Exemptions as set forth below:

The first sentence of section II.A.(4) of these exemptions is amended to read: ''The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter.''

The Notice invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held. The Department received one written comment and no requests for a hearing in response to the proposed exemption.

The comment, submitted by The Bond Market Association, requested that the amendment have an effective date of January 1, 2001. The comment stated that one member of the Association desired such an earlier effective date, and in the interests of consistency and administrative efficiency, the Association requested that all other Underwriter Exemptions affected by the proposed exemption be amended as of January 1, 2001.

The Department concurs with the commenter and has given the amendment to section II.A.(4) a January 1, 2001, effective date.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries; and

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), the Department amends the following individual Prohibited Transaction Exemptions (PTEs): PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); PTE 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); PTE 2000–41, 65 FR 51039 (August 22, 2000); and PTE 2000–55 (November 13, 2000), each as subsequently amended by PTE 97–34 and PTE 2000–58.

In addition, the Department notes that it is also granting individual exemptive relief for: Deutsche Bank A.G., New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999); and William J. Mayer Securities, FAN 01–25E (October 15, 2001), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62.

[2] The exemptions are PTE 90–23 (55 FR 20545, May 17, 1990), PTE 90–31 (55 FR 23144, June 6, 1990), and PTE 90–33 (55 FR 23151, June 6, 1990).

I. Transactions

A. Effective for transactions occurring on or after August 23, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[3]

B. Effective for transactions occurring on or after August 23, 2000, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Securities does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in an Issuer containing assets sold or serviced by the same entity.[4] For purposes of this paragraph (iv) only, an entity will not be considered to service assets contained in a Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that the conditions set forth in paragraphs (i), (iii) and (iv) of subsection I.B.(1) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective for transactions occurring on or after August 23, 2000, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of an Issuer, including the use of any Eligible Swap transaction; or, effective January 1, 1999, the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer;[5] and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

D. Effective for transactions occurring on or after August 23, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

II. General Conditions

A. The relief provided under section I. is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

[3] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act, and regulation 29 CFR 2510.3–21(c).

[4] For purposes of this Underwriter Exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[5] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to ''prospectus'' include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories;

(4) The Trustee is not an Affiliate of any member of the Restricted Group, other than, effective on or after January 1, 2001, an Underwriter. For purposes of this requirement:

(a) The Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) Effective for transactions occurring on or after January 1, 1998, subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as the result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that:

(i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the later of August 23, 2000 or the date such Servicer became an Affiliate of the Trustee; and

(ii) Such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund an Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations of the types specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for determining the eligibility of the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency.

Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations held by the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act;

(8) In order to insure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating

any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A ''true sale'' of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon this Underwriter Exemption only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer or any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under section I., if the provision of subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6).

III. Definitions

For purposes of this exemption:

A. ''Security'' means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. ''Issuer'' means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consist solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and/or commercial real property (including obligations secured by leasehold interests on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(i)(2);[6] and/or

[6] In Advisory Opinion 99–05A (Feb. 22, 1999), the Department expressed its view that mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation (''Farmer Mac'') meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR 2510.3–101(i)(2).

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B.(1).[7]

Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that: (i) The rights and interests evidenced by the Securities issued in such Designated Transactions (as defined in section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) The outstanding principal balance due under the obligation which is held by the Issuer and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3) (a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement; and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in paragraphs (a)–(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to securityholders occurring after the end of the Pre-Funding Period.

For purposes of this paragraph (c) of subsection III.B.(3), the term ''permitted investments'' means investments which: (i) Are either: (x) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (y) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and (iii) are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term ''Issuer'' does not include any investment pool unless: (i) The assets of the type described in paragraphs (a)–(f) of subsection III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption.

C. ''Underwriter'' means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this exemption. In addition, the term Underwriter includes Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Credit Lyonnais Securities (USA) Inc., ABN AMRO Inc., Ironwood Capital Partners Ltd. and William J. Mayer Securities LLC (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; or

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

D. ''Sponsor'' means the entity that organizes an Issuer by depositing obligations therein in exchange for Securities.

E. ''Master Servicer'' means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. ''Servicer'' means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. ''Trust'' means an Issuer which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. ''Trustee'' means the Trustee of any Trust which issues Securities and also includes an Indenture Trustee. ''Indenture Trustee'' means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the servicer.

J. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, an Issuer. Notwithstanding the foregoing, a person is not an insurer solely because it holds Securities representing an interest in an Issuer which are of a class subordinated to Securities representing an interest in the same Issuer.

[7] The Department wishes to take the opportunity to clarify its view that the definition of Issuer contained in subsection III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the Underwriter Exemption generally provides relief only for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

K. ''Obligor'' means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes Secured by Leases, ''Obligor'' shall also include any owner of property subject to any lease included in the Issuer, or subject to any lease securing an obligation included in the Issuer.

L. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

M. ''Restricted Group'' with respect to a class of Securities means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

(8) Any Affiliate of a person described in subsections III.M.(1)–(7).

N. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be ''independent'' of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

Q. ''Sale'' includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this Underwriter Exemption applicable to sales are met.

R. ''Forward Delivery Commitment'' means a contract for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. ''Reasonable Compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c–2.

T. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in subsection III.T.(1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as the Issuer would have if the equipment note were secured only by the equipment and not the lease.

V. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) The Issuer owns or holds a security interest in the lease;

(2) The Issuer owns or holds a security interest in the leased motor vehicle; and

(3) The Issuer's security interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. ''Pooling and Servicing Agreement'' means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. ''Pooling and Servicing Agreement'' also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. ''Rating Agency'' means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies Inc., Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., Fitch ICBA, Inc. or any successors thereto.

Y. ''Capitalized Interest Account'' means an Issuer account: (i) which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the interest rate payable under the Securities; and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

Z. ''Closing Date'' means the date the Issuer is formed, the Securities are first issued and the Issuer's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection II.A.(7)) are transferred to the Issuer.

AA. ''Pre-Funding Account'' means an Issuer account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in paragraph (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

BB. ''Pre-Funding Limit'' means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered, which is less than or equal to: (i) 40 percent, effective for transactions occurring on or after January 1, 1992, but prior to May 23, 1997; and (ii) 25 percent, for transactions occurring on or after May 23, 1997.

CC. ''Pre-Funding Period'' means the period commencing on the Closing Date and ending no later than the earliest to occur of: (i) The date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement or (iii) the date which is the later of three months or ninety days after the Closing Date.

DD. ''Designated Transaction'' means a securitization transaction in which the assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that

bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. ''Ratings Dependent Swap'' means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a ''Non-Ratings Dependent Swap''. With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. ''Eligible Swap'' means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g., LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF.(1) through (4) without the consent of the Trustee.

GG. ''Eligible Swap Counterparty'' means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemption, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. ''Qualified Plan Investor'' means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemption, such a fiduciary is either:

(1) A ''qualified professional asset manager'' (QPAM),[8] as defined under Part V(a) of PTE 84–14, 49 FR 9494, 9506 (March 13, 1984);

(2) An ''in-house asset manager'' (INHAM),[9] as defined under Part IV(a) of PTE 96–23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. ''Excess Spread'' means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. ''Eligible Yield Supplement Agreement'' means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Effective for transactions occurring on or after April 7, 1998, such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not ''leveraged'' as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)-(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) the principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of

[8] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[9] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

IV. Modifications

For the Underwriter Exemptions provided to Residential Funding Corporation, Residential Funding Mortgage Securities, Inc., et. al. and GE Capital Mortgage Services, Inc. and GECC Capital Markets (the Applicants) (PTEs 94–29 and 94–73, respectively);

A. Section III.A. of this exemption is modified to read as follows:

A. ''Security'' means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which (i) one of the Applicants or any of its Affiliates is the Sponsor, [and] an entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this exemption, is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent or (ii) one of the Applicants or any of its Affiliates is the sole underwriter or the manager or co-manager of the underwriting syndicate, or a selling or placement agent.

B. Section III.C. of this exemption is modified to read as follows:

C. Underwriter means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this exemption. In addition, the term Underwriter includes Ironwood Capital Partners Ltd., Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc.; ABN AMRO, Credit Lyonnais Securities, Inc. and William J. Mayer Securities LLC (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity;

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) above is a manger or co-manager with respect to the Securities; or

(4) Any entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this exemption.

V. Effective Date

This exemption is effective for transactions occurring on or after August 23, 2000, except as otherwise provided in section I.C., subsection II.A.(4) and section III.JJ. of the exemption. Section I.C., relating to the defeasance of mortgage obligations, is applicable to transactions occurring on or after January 1, 1999; the provision of subsection II.A.(4) permitting the Trustee to be an Affiliate of an Underwriter is applicable to transactions occurring on or after January 1, 2001; subsection II.A.(4)(b) is applicable to transactions occurring on or after January 1, 1998; and section III.JJ., relating to Eligible Yield Supplement Agreements involving notional principal contracts, is applicable to transactions occurring on or after April 7, 1998.

For a more complete statement of the facts and representations supporting the Department's decision to amend the Underwriter Exemptions, refer to the notice of proposed exemption that was published on May 22, 2002.

Signed at Washington, DC, this 19th day of August, 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–21434 Filed 8–21–02; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Notice of Availability of Calendar Year 2003 Competitive Grant Funds for Services Areas MI–9, MI–12, MI–13, MI–14, MI–15, NMI–1, and MMI in Michigan

AGENCY: Legal Services Corporation.

ACTION: Solicitation of proposals for the Provision of Civil Legal Services for service areas MI–9, MI–12, MI–13, MI–14, MI–15, NMI–1, and MMI in Michigan.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering federal funds provided for civil legal services to the poor. Congress has adopted legislation requiring LSC to utilize a system of competitive bidding for the award of grants and contracts.

LSC hereby announces the availability of competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to the eligible client population in the Basic Field-General, Basic Field-Migrant, and Basic Field-Native American service areas in Michigan. The exact amount of congressionally appropriated funds and the date and terms of their availability for calendar year 2003 are not yet known.

DATES: See **SUPPLEMENTARY INFORMATION** section for grants competition dates.

ADDRESSES: Legal Services Corporation—Competitive Grants, 750 First Street NE, 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Office of Program Performance, competitive grants service desk by fax at 1.877.378.9997, by e-mail at *competition@lsc.gov,* or visit the LSC competition Web site at *www.ain.lsc.gov.*

SUPPLEMENTARY INFORMATION: The Request for Proposals (RFP) is available from *www.ain.lsc.gov.* A Notice of Intent to Compete is required. It is due by 5 p.m. ET, September 13, 2002. Grant proposals must be received at LSC by 5 p.m. ET, October 11, 2002. LSC is seeking proposals from non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients, and from private attorneys, groups of private attorneys or law firms, state or local governments, and substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The RFP, containing the grant application, guidelines, proposal content requirements and specific selection criteria, is available at *www.ain.lsc.gov.* Descriptions of the Michigan service areas are available at *www.ain.lsc.gov* (Once at the site, click on Bulletin Board). LSC will not fax the solicitation package to interested parties.

Issue Date: August 16, 2002.

Michael A. Genz,

Director, Office of Program Performance.

[FR Doc. 02–21379 Filed 8–21–02; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Proposed Collection; Comment Request

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) is soliciting public comments on the proposed information collection described below. The proposed information collection will be sent to the Office of Management and Budget (OMB) for review, as required by the provisions of the Paperwork Reduction Act of 1995.

DATES: Comments on this information collection must be submitted on or before October 21, 2002.

ADDRESSES: Send comments to Ms. Susan Daisey, Director, Office of Grant Management, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 311, Washington, DC 20506, or by email to: *sdaisey@neh.gov.* Telephone: 202–606–8494.

SUPPLEMENTARY INFORMATION: The National Endowment for the Humanities will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This notice is soliciting comments from members of the public and affected agencies. NEH is particularly interested in comments which help the agency 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, including the validity of the methodology and assumptions used; (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.

This Notice also lists the following information:

Type of Review: Extension of a currently approved collection.

Agency: National Endowment for the Humanities.

Title of Proposal: My History is America's History Website.

OMB Number: 3136–0136.

Frequency of Collection: Continual.

Affected Public: General Public.

Number of Respondents: Approximately 400,000 per year.

Estimated Time per Respondent: Approximately one quarter hour per response.

Estimated Total Burden Hours: 100,000.

Total Annualized capital/startup costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

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

Lynne Munson,

Deputy Chairman.

[FR Doc. 02–21475 Filed 8–21–02; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–131]

Notice of Renewal of Facility Operating License No. R–57, Department of Veterans Affairs, Nebraska–Western Iowa Health Care System

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 11 to Facility Operating License No. R–57 for the Department of Veterans Affairs, Nebraska–Western Iowa Health Care System (the licensee), which renews the license for operation of the Alan J. Blotcky Reactor Facility located at the Department of Veterans Affairs, Nebraska–Western Iowa Health Care System, Omaha Division (formerly known as the VA Medical Center Omaha) in Omaha, Nebraska.

The facility is a non-power reactor that has been operating at a power level not in excess of 20 kilowatts (thermal). The renewed Facility Operating License No. R–57 will expire 20 years from its date of issuance.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter 1. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the **Federal Register** on January 26, 1995, at 60 CFR part 5228. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

Continues operation of the reactor will not require alteration of buildings or structures, will not lead to significant changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. Based on the foregoing and on the Environmental Assessment, the Commission concludes that renewal of the license will not result in any significant environmental impacts.

The Commission has prepared a ''Safety Evaluation Report Related to the Renewal of the Operating License for the Research Reactor at the Department of Veterans Affairs, Nebraska–Western Iowa Health Care System, Omaha Division'' for the renewal of Facility Operating License No. R–57 and has, based on that evaluation, concluded that the facility can continue to be operated by the licensee without endangering the health and safety of the public.

The Commission also prepared an Environmental Assessment which was published in the **Federal Register** on November 27, 2001, (66 FR 59267) for the renewal of Facility Operating License No. R–57 and has concluded that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see: (1) The application for amendment dated May 10, 1993, as supplemented on March 1, 1995, December 17, 1997, March 12, April 5, July 29, November 24 and December 2, 1999, January 4, September 25, October 2 and October 24, 2000, and August 8 and October 16, 2001, (2) Amendment No. 11 to Facility Operating License No. R–57; (3) the related Safety Evaluation Report and (4) the Environmental Assessment dated November 20, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, (first floor), Rockville, Maryland. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRS's public documents. Documents related to this license renewal dated on or after November 24, 1999, may be accessed through the NRC's Public Electronic Reading Room on the internet at *http://www.nrc.gov.* 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 5th day of August 2002.

For the U.S. Nuclear Regulatory Commission.

Patrick M. Madden,

Section Chief, Research and Test Reactors Section, Operating Reactor Improvements Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–21415 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Dominion Nuclear Connecticut, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–65 issued to Dominion Nuclear Connecticut, Inc. (the licensee) for operation of the Millstone Power Station, Unit No. 2, located in New London County, Connecticut.

The proposed amendment would revise Technical Specification (TS) Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours'' to ''* * * up to 24 hours or up to the limit of the specified surveillance interval, whichever is greater.'' In addition, the following requirement would be added to SR 4.0.3: ''A risk evaluation shall be performed for any surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process (CLIIP). The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the model NSHC determination for amendments concerning missed surveillances in its application dated July 19, 2002.

The proposed amendment would also make administrative changes to SRs 4.01 and 4.03 to be consistent with NUREG–1432, Revision 2, ''Standard Technical Specifications, Combustion Engineering Plants.'' These changes are necessary to make the current MP2 TSs compatible with the proposed CLIIP changes for missed surveillances. The licensee provided its analysis of the issue of NSHC for these proposed changes in its application.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves NSHC. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

[CLIIP Changes]

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

[Administrative Changes]

The proposed change involves rewording of the existing Technical Specifications to be consistent with NUREG–1432, Revision 2. These modifications involve no technical changes to the existing Technical Specifications. As such, these changes are administrative in nature and do not affect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, these changes will not increase the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

[CLIIP Changes]

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[Administrative Changes]

The proposed change involves rewording of the existing Technical Specifications to be consistent with NUREG–1432, Revision 2. The change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The changes will not impose any new or different requirements or eliminate any existing requirements. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

[CLIIP Changes]

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform

the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

[Administrative Changes]

The proposed change involves rewording of the existing Technical Specifications to be consistent with NUREG–1432, Revision 2. The changes are administrative in nature and will not involve any technical changes. The changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Also, since these changes are administrative in nature, no question of safety is involved. Therefore, there will be no reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves NSHC. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 23, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: ''In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.''

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of NSHC. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 19, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (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 16th day of August, 2002.

For the Nuclear Regulatory Commission.

Richard B. Ennis,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–21417 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

PSEG Nuclear LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of PSEG Nuclear LLC (the licensee) to withdraw its August 17, 2001, application for proposed amendment to Facility Operating License Nos. DPR–70 and DPR–75 for the Salem Nuclear Generating Station, Unit Nos. 1 and 2, located in Salem County, New Jersey.

The proposed amendment would have revised Salem Technical Specification (TS) Surveillance Requirement 4.6.2.3, and its associated TS Bases. Specifically, the proposed change would have modified the current acceptance criterion for the service water flow rate through the Containment Fan Coil Units from ≥ 2,550 gallons per minute (gpm) to ≥ 2,300 gpm.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 17, 2001 (66 FR 52802). However, by letter dated August 15, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 17, 2001, and the licensee's letter dated August 15, 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 e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 16th day of August, 2002.

For the Nuclear Regulatory Commission.

Robert J. Fretz,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–21412 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Company, H.B. Robinson Steam Electric Plant, Unit No. 2; Notice of Intent to Prepare an Environmental Impact Statement and Conduct Scoping Process

Carolina Power & Light Co. (CP&L) has submitted an application for renewal of Facility Operating License DPR–23 for an additional 20 years of operation at the H. B. Robinson Steam Electric Plant (Robinson), Unit No. 2. Robinson is located in Darlington County, South Carolina, approximately 5 miles north-northwest of Hartsville, South Carolina. The application for renewal was submitted by letter dated June 17, 2002, pursuant to 10 CFR part 54. A notice of receipt of application, including the environmental report (ER), was published in the **Federal Register** on July 18, 2002 (67 FR 47410). A notice of acceptance for docketing of

the application for renewal of the facility operating license was published in the **Federal Register** on August 16, 2002 (67 FR 53626). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29.

In accordance with 10 CFR 54.23 and 10 CFR 51.53(c), CP&L submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR Part 51 and is available for public inspection at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html,* which provides access through the NRC's Public Electronic Reading Room (PERR) link. 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, or 301–415–4737, or by e-mail to pdr@nrc.gov. The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/robinson.html.* In addition, the Hartsville Memorial Library, located at 147 West College Avenue, Hartsville, South Carolina 29550, has agreed to make the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's ''Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants,'' (NUREG–1437) in support of the review of the application for renewal of the Robinson operating license for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. Section 51.95 of 10 CFR requires that the NRC prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act (NEPA) and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate, from detailed study, those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, Carolina Power & Light Co.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the Robinson license renewal supplement to the GEIS. The scoping meetings will be held in the C.W. Coker Auditorium of Davidson Hall on the campus of Coker College in Hartsville, South Carolina, on Wednesday, September 25, 2002. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include (1) an overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour before the start of each session in Davidson Hall. No comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting Mr. Richard L. Emch, Jr., by telephone at 1–800–368–5642, extension 1590, or by Internet to the NRC at *RobinsonEIS@nrc.gov* no later than September 20, 2002. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Mr. Emch will need to be contacted no later than September 20, 2002, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the Robinson license renewal review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of

Administration, Mailstop T–6 D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by October 25, 2002. Electronic comments may be sent by the Internet to the NRC at RobinsonEIS@nrc.gov. Electronic submissions should be sent no later than October 25, 2002, to be considered in the scoping process. Comments will be available electronically and accessible through the NRC's PERR link *http://www.nrc.gov/reading-rm/adams.html.*

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice of acceptance for docketing. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection through the PERR link. The staff will then prepare and issue, for comment, the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Emch at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 16th day of August, 2002.

For the Nuclear Regulatory Commission.

Samson S. Lee,

Acting Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–21413 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Receipt of Supplemental Environmental Report for the Mixed Oxide Fuel Fabrication Facility and Notice of Public Meetings

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt and notice of public meetings.

SUMMARY: On July 11, 2002, the U.S. Nuclear Regulatory Commission (NRC) received a supplemental Environmental Report (ER) from Duke COGEMA Stone & Webster (DCS), for the proposed Mixed Oxide (MOX) Fuel Fabrication Facility. The need for the supplemental ER arose, in January 2002, when the U.S. Department of Energy (DOE) announced its decision to alter its planned hybrid approach for surplus weapons plutonium disposition [65 FR 1608]. The Plutonium Immobilization Plant (PIP) that DOE had planned to build and operate as part of its hybrid approach will not be built. Instead, DOE decided that 34 metric tons of surplus weapons plutonium would be converted into MOX fuel at the proposed MOX facility. DOE's decision not to build the Plutonium Immobilization Plant (PIP) and convert all of the plutonium into MOX fuel requires design changes to the proposed MOX facility. The NRC staff found that due to these changes, DCS would be required to submit a supplemental ER. A notice of delay in issuance of the Draft and Final Environmental Impact Statements (EIS) for the proposed MOX facility was published in the **Federal Register** on April 24, 2002 (67 FR 20183). This **Federal Register** notice also discussed changes to the proposed MOX facility and DOE surplus disposition program.

The NRC will host three public meetings. The meetings are part of the continuing process to keep affected stakeholders and the public informed of plans, schedules and important issues related to the preparation of the EIS, and to answer questions. The purpose of the meetings will be to inform the public of changes in the supplemental ER and the DOE surplus disposition program. NRC staff will also discuss how these changes have affected the scope of the Draft EIS summarized in the Scoping Summary Report dated August 2001. In the April 24, 2002 **Federal Register** notice, public comment was solicited on two issues.

(1) How the immobilization of surplus plutonium as a No Action Alternative should be discussed in the DEIS, since DOE has canceled plans to build the Plutonium Immobilization Plant.

(2) Whether there are additional reasonable alternatives not identified during scoping that should be considered in the DEIS, in light of the changes described above. As discussed in the Scoping Summary Report, NRC is considering the environmental impacts of the proposed action (construction and operation of the proposed MOX fuel fabrication facility), continued storage of surplus plutonium at existing DOE sites, and immobilization of surplus plutonium. If the immobilization alternative is not considered, then the DEIS would only evaluate the proposed action and one No Action Alternative.

NRC staff will summarize the responses received and solicit views of people at the meetings. Information will be provided on the EIS review process and stakeholders will be updated on the revised EIS schedule. The meeting dates, times and locations are listed below:

Tuesday, September 17, 2002, 7 p.m. to 10 p.m., North Augusta Community Center, 495 Brookside Avenue, North Augusta, South Carolina.

Wednesday, September 18, 2002, 7 p.m. to 10 p.m., Coastal Georgia Center, 305 Fahm Street, Savannah, Georgia.

Thursday, September 19, 2002, 7 p.m. to 10 p.m., Charlotte-Mecklenburg Government Center, 600 E. Fourth Street, Charlotte, North Carolina.

FOR FURTHER INFORMATION CONTACT: For general information on the NRC NEPA process, please contact: Tim Harris at (301) 415–6613. For general or technical information associated with the proposed MOX facility, please contact: Tim Johnson at (301) 415–7299, or Drew Persinko at (301) 415–6522.

Availability of Documents for Review

Information on the supplemental ER and other documents associated with the proposed MOX project are available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm.html* or the MOX web page: *http://www.nrc.gov/materials/fuel-cycle-fac/MOX/licensing.html.* Documents may also be obtained from NRC's Public Document Room at U.S. Nuclear Regulatory Commission, Public Document Room, Washington, DC 20555.

Signed in Rockville, MD, this 15th day of August, 2002.

For the Nuclear Regulatory Commission.

Cheryl Trottier,

Chief, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–21416 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on September 23, 2002, Bob Ruud Community Center, 150 N. Highway 160, Pahrump, Nevada.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Monday, September 23, 2002—3 p.m. until 4:45 p.m.*

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designated Federal Official, Howard J. Larson (telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual two working days prior to the meeting to be advised of any changes in schedule that may have occurred.

Dated: August 15, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–21419 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Human Factors; Notice of Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on September 10, 2002, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, September 10, 2002—8:30 a.m. until the conclusion of business.*

The Subcommittee will review the proposed Human Reliability Research Program Plan, including research activities and plans related to data collection and development of analysis tools on human reliability associated with nuclear power plant operation and safety. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify one of the ACRS staff engineers named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting either Dr. Medhat M. El-Zeftawy (telephone 301–415–6889) or Mr. August W. Cronenberg (telephone 301–415–6809) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individuals at least two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: August 15, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–21420 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on September 9, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Monday, September 9, 2002—10:45 a.m. until 12:30 p.m.*

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will

be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any changes in schedule that may have occurred.

Dated: August 15, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–21421 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Plant Operations; Notice of Meeting

The ACRS Subcommittee on Plant Operations will hold a meeting on September 9, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Monday, September 9, 2002—1:30 p.m. until 5 p.m.*

The Subcommittee will continue its discussion of activities associated with the Reactor Oversight Process (ROP), specifically status of staff activities to address the issue in the Staff Requirements Memorandum of December 20, 2001, in which the Commission directed that the NRC staff, with input from ACRS, should provide recommendations for resolving in a transparent manner, apparent conflicts and discrepancies between aspects of the revised ROP process that are risk-informed (*e.g.,* significance determination process) and those that are performance based (*e.g.,* performance indicators). The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman and written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding matters scheduled for this meeting.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301/415–3151) between 8 a.m. and 5:30 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: August 15, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–21422 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on September 9, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Monday, September 9, 2002—8:30 a.m. until 10:30 a.m.*

The Subcommittee will discuss proposed revisions to Regulatory Guide 1.174, ''Use of PRA in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' and Standard Review Plan Chapter 19, ''Guidance on Use of PRA in Plant-Specific, Risk-Informed Decisionmaking,'' including the ACRS recommendations provided in its letter of July 23, 2002. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify one of the staff engineers named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding these matters.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting either Mr. Howard J. Larson (telephone: 301–415–6805) or Mr. August W. Cronenberg (telephone 301–415–6809) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact one of the above named individuals one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: August 15, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–21423 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

September 5, 2002 Public Hearing; Sunshine Act

Time and Date: 2 PM, Thursday, September 5, 2002.

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Hearing OPEN to the Public at 2 PM.

Purpose: Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedures: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 PM, Tuesday, September 3, 2002. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 PM, Tuesday, September 3, 2002. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov.*

Dated: August 29, 2002.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 02–21542 Filed 8–20–02; 3:43 pm]

BILLING CODE 3210–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Request for Medicare Payment.

(2) *Form(s) submitted:* G–740s, CMS–1500.

(3) *OMB Number:* 3220–0131.

(4) *Expiration date of current OMB clearance:* 11/30/2002.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households, Business or other for-profit.

(7) *Estimated annual number of respondents: See* Justification (Item No. 12).

(8) *Total annual responses:* 1.

(9) *Total annual reporting hours:* 1.

(10) *Collection description:* The Railroad Retirement Board (RRB) administers the Medicare program for persons covered by the Railroad Retirement System. The collection obtains the information needed by Palmetto GBA, the RRB's carrier, to pay claims for services covered under Part B of the program.

Additional Information or Comments

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–21352 Filed 8–21–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27561]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

August 16, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 10, 2002, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After DATE, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Grid Group plc (70–10067)

National Grid Group plc (''National Grid'' or ''Applicant''), 15 Marylebone Road, London NW1 5JD, United Kingdom, a registered holding company, has filed a declaration under sections 6(a), 7, and 33 of the Act and rules 53 and 54 under the Act.

I. Background

In connection with its intended acquisition of the approximately 3.5 billion outstanding ordinary shares of Lattice Group plc (''Lattice'') a United Kingdom gas utility holding company, (''Merger''), National Grid proposes to issue and sell approximately $9.4 billion of its ordinary shares for the purpose of financing the acquisition of a foreign utility company as defined in section 33 of the Act (''FUCO''). Further, National Grid seeks authority to issue and sell an additional amount of

approximately $7.5 billion of debt and equity securities and to enter into guarantees all for the purpose of financing the acquisition of or guaranteeing the securities of FUCOs. National Grid currently has FUCO investments of approximately $3.1 billion.

A. Merger Parties

1. National Grid

National Grid was incorporated in England and Wales on July 11, 2000. Its ordinary shares are listed on the London Stock Exchange and its American Depositary Receipts are listed on the New York Stock Exchange. As of April 19, 2002 there were 1,776,636,707 ordinary shares and one special share outstanding. National Grid employs, in conjunction with its subsidiaries, approximately 14,000 employees. As of April 19, 2002, National Grid had a market capitalization of approximately $12.6 billion.

National Grid holds ownership interests in various utility and nonutility businesses outside the United States through National Grid Holdings One plc (''National Grid Holdings One'').[1] National Grid Holdings One's principal business in the United Kingdom (''UK'') is the transmission of electricity in England and Wales, which it conducts through its wholly owned indirect subsidiary, The National Grid Company (''NCG''). National Grid through National Grid Holdings One has electric utility businesses located in Argentina and Zambia.[2] In addition, National Grid is engaged in undersea electric transmission interconnector projects in Australia, Norway, the Netherlands and Ireland that are in various stages of development. National Grid conducts its utility and nonutility businesses [3] in the United States through National Grid USA, an indirect, wholly owned registered holding company subsidiary of National Grid.

National Grid USA is engaged, through its subsidiaries, in electric distribution to residential, commercial, and industrial customers in New England and the distribution and sale of electricity and natural gas to residential, commercial, and industrial customers in New York. The company owns all of the outstanding stock of the following public-utility companies: Niagara Mohawk Power Corporation (''Niagara Mohawk''), Massachusetts Electric Company, The Narragansett Electric Company, Granite State Electric Company, and Nantucket Electric Company (collectively, ''Distribution companies''). The Distribution Companies deliver electricity to residential, commercial, and industrial customers, operate and maintain distribution power lines and substations, provide metering, billing, and customer services, design and build distribution-related facilities, and provide related products and services including energy efficiency programs for customers. Niagara Mohawk also provides gas utility service to approximately 550,000 customers in New York State. National Grid USA also holds ownership interests in four other public-utility companies: New England Power Company (''NEPCO''), New England Electric Transmission Corporation (''NEET''), New England Hydro-Transmission Corporation (''N.H. Hydro'') and New England Hydro-Transmission Electric Company, Inc. (''Massachusetts Hydro''). NEPCO, a wholly owned subsidiary of National Grid USA, operates electricity transmission facilities in the states of Massachusetts, Rhode Island, New Hampshire, and Vermont, and holds National Grid USA's remaining interests in certain generating units (which the company is actively seeking to divest). NEET, another wholly owned subsidiary of National Grid USA, owns and operates a direct current/alternating current converter terminal facility for the first phase of the Hydro-Quebec and New England interconnection (''Interconnection'') and six miles of high voltage direct current transmission line in New Hampshire. N.H. Hydro, in which National Grid USA holds 53.97% of the common stock, operates 121 miles of high voltage direct current transmission line in New Hampshire for the second phase of the Interconnection, extending to the Massachusetts border. National Grid USA holds directly 53.97% of the common stock of N.H. Hydro, which operates 121 miles of high voltage direct current transmission line in New Hampshire for the second phase of the Interconnection, extending to the Massachusetts border. National Grid USA also holds directly 53.97% of the voting stock of Massachusetts Hydro, which operates a direct current/alternating current terminal and related facilities for the second phase of the Interconnection and twelve miles of high-voltage direct current transmission line in Massachusetts.

2. Lattice

Lattice is incorporated in England and Wales, and is one of three successors to the former British Gas plc. The company's ordinary shares are listed on the London Stock Exchange. As of April 19, 2002, there were 3,528,149,704 ordinary shares and one special share outstanding. Lattice employs, in conjunction with its subsidiaries, approximately 17,000 employees. As of April 19, 2002, Lattice had a market capitalization of approximately $8.8 billion.

The Lattice system is subdivided into two holding companies: Transco Holdings plc (''Transco Holdings'') and Lattice Group Holdings Ltc. (''Lattice Group Holdings''). Transco plc (''Transco''), the principal subsidiary of Transco Holdings, owns, operates, and develops the majority of Great Britain's gas transportation and distribution system.

Through subsidiaries, Lattice Group Holdings: provides advanced technology and systems solutions for energy and utility companies; provides gas connection services to the gas transportation network under a service provider contract with Transco; [4] provides multi-utility infrastructure services to industrial and commercial customers and developers; manages the Lattice system's non-operational real estate portfolio; [5] offers leasing and vehicle management services; provides managed payroll services, pensions administration, accounting, business process outsourcing and consulting services; and acquires, builds, leases, and manages sites for mobile telecommunications operators in the United Kingdom.

B. Merger

The terms of the Merger are governed by a Scheme of Arrangement (''Scheme''). Under the Scheme: (1) The issued shares of Lattice would be cancelled, and new shares would be issued to National Grid Holdings One; (2) National Grid would issue 0.375 shares of its stock to Lattice shareholders in exchange for each Lattice share held; (3) National Grid shareholders would retain their shares; and (4) National Grid would be renamed National Grid Transco plc (''Grid Transco'') and would retain its listings

[1] National Grid Holdings One is a FUCO within the meaning of section 33 of the Act.

[2] National Grid is joint owner of Transener SA, the owner and operator of the principal high-voltage electricity system in Argentina. In Zambia, National Grid is joint owner of Copperbelt Energy Corporation, the former Power Division of the Zambia Consolidated Copper Mines.

[3] National Grid USA's nonutility subsidiaries, among other activities, construct and lease of fiber optic telecommunications systems and provide electric utility restructuring and customer choice consulting services to nonaffiliated utilities.

[4] Lattice Group Holdings also seeks to provide indirectly facilities management services in other non-gas markets.

[5] Applicant states that the protfolio consists largely of land and buildings either currently or previously occupied by a Lattice system company.

on the London and New York stock exchanges. Applicant states that, upon completion of the Merger, National Grid and Lattice shareholders would hold approximately 57.3% and 42.7%, respectively, of the issued shares of Grid Transco.

C. Current Authority

By order dated January 16, 2002 (HCAR No. 27490), the Commission authorized, among other things, National Grid to (1) invest up to $5.406 billion in FUCOs; and (2) issue and sell equity and debt securities the value of which would not exceed an aggregate amount of $6 billion at any one time outstanding (''Aggregate Limit'') through September 30, 2004. More specifically, National Grid was authorized to issue up to $4.5 billion in equity securities and $5 billion in debt securities, subject to the Aggregate Limit.

II. Requested Authority

As of March 31, 2002, National Grid had invested, in the aggregate, approximately $3.104 billion in FUCOs; therefore, National Grid's current unused FUCO investment authority is $2.302 billion. The Merger alone would require the issuance of approximately $9.4 billion in Grid Transco shares, and a corresponding increase in the holding company's authorized level of FUCO investment. Consequently, Grid Transco's aggregate investment would be approximately $12.5 billion. To effect the Merger and maintain flexibility to make other FUCO investments, National Grid requests authority, through September 30, 2004, to: (1) Issue and sell equity and debt securities and to enter into guarantees up to an aggregate limit of $20 billion, subject to the following subcategory limits: up to (a) $18 billion in equity securities; (b) $12 billion in debt securities; and (c) $6 billion in guaranties; and (2) invest up to $20 billion in FUCOs.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21427 Filed 8–21–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 26, 2002:

An Open Meeting will be held on Tuesday, August 27, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room, and Closed Meetings will be held on Wednesday, August 28, 2002 at 10 a.m., and Thursday, August 29, 2002 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Wednesday, August 28, 2002, will be:

Formal orders of investigation;
Litigation matter;
Regulatory matter bearing enforcement implications;
Institution and settlement of injunctive actions; and
Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the Closed Meeting scheduled for Thursday, August 29, 2002, will be:

Settlement of injunctive actions; and Opinions

The subject matter of the Open Meeting scheduled for Tuesday, August 27, 2002, will be:

1. The Commission will consider approving a delegation to the General Counsel to issue certain orders in Commission administrative proceedings. The proposed delegation would authorize the General Counsel to issue orders, pursuant to Rule of Practice 411(b), under which the Commission would take up on its own motion the issue of what sanctions are appropriate in the public interest.

2. The Commission will consider whether to issue a notice of an application from The Mexico Fund, Inc. (the ''Fund'') seeking certain exemptions from the Investment Company Act of 1940. The application seeks an order to permit the Fund to make periodic repurchase offers in compliance with rule 23c–3 under the Act, except that (i) the repurchase offers would be for between one and one hundred percent of the Fund's outstanding shares provided that the Fund will offer to repurchase at least five percent of its outstanding shares each fiscal year; (ii) shareholders participating in the repurchase offers would receive in-kind pro rata portfolio securities of the Fund for their shares; and (iii) the board of directors of the Fund would be able to set and reset the periodic interval between repurchase offers at 3, 6 or 12 months upon prior notice to shareholders. The Fund also requests that the order permit it to remain a closed-end management investment company should the Fund's securities be deemed ''redeemable securities'' as a result of the repurchase offers and to permit certain affiliated shareholders to participate in the repurchases.

3. The Commission will consider whether to adopt amendments to accelerate the filing of quarterly and annual reports under the Securities Exchange Act of 1934. The amendments also would require companies to disclose in their annual reports whether they provide access to their reports on their websites. The amendments were proposed by the Commission in April, 2002.

4. The Commission will consider whether to adopt new rules that would require an issuer's principal executive and financial officers to certify the issuer's quarterly and annual reports filed under the Securities Exchange Act of 1934. In addition, the new rules would require issuers to maintain internal controls to provide reasonable assurance that they are able to collect, process and disclose the information required in their Exchange Act reports, and to periodically review and evaluate these controls. The Commission announced in Exchange Act Release No. 46300 (Aug. 2, 2002) that it would consider rules to implement Section 302 of the Sarbanes-Oxley Act of 2002.

5. The Commission will consider adopting rules and form amendments to implement the accelerated filing deadline applicable to change of beneficial ownership reports required to be filed by officers, directors and principal security holders under Section 16(a) of the Securities Exchange Act of 1934, as amended by Section 403 of the Sarbanes-Oxley Act of 2002. The Commission announced in Exchange Act Release No. 46313 (Aug. 6, 2002) that it would consider adopting such amendments.

6. The Commission will consider whether the National Association of Securities Dealers, Inc. (''NASD'') and the Nasdaq Stock Market, Inc. (''Nasdaq'') have satisfied the conditions that must be implemented prior to or at the same time as Nasdaq's

implementation of a new order display and collection facility (''SuperMontage''). The conditions, which were imposed by the Commission in a prior order granting conditional approval of the SuperMontage, include an alternative display facility established by the NASD for the display of market maker and ECN quotes.

7. The Commission will consider whether to grant a de minimis exemption from the trade-through restrictions of the Intermarket Trading System Plan for transactions in exchange-traded funds tracking the Nasdaq-100 Index (''QQQs''), the Dow Jones Industrial Average (''DIAMONDs''), and the Standard and Poors 500 Index (''SPDRs''). The exemption would cover transactions that are executed at no more than three cents ($0.03) away from the national best bid and offer displayed in the Consolidated Quote.

8. The Commission will consider whether to issue a release adopting rule amendments and a new rule under the Securities Exchange Act of 1934 (''Exchange Act'') that were proposed for comment in the **Federal Register** on June 10, 2002. New paragraph (e) of Rule 10b–10 and new Rule 11d2–1 are designed to clarify the disclosures broker-dealers effecting transactions in security futures products in futures accounts must make in the confirmations sent to customers regarding those transactions.

9. The Commission is proposing for comment amendments to the formula for determination of customer reserve requirements (''Reserve Formula'') of broker-dealers under Rule 15c3–3 to the Securities Exchange Act of 1934. The proposed amendments relate to treatment under the Reserve Formula of customer security futures product margin required and on deposit with a registered clearing agency or a derivatives clearing organization.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: August 20, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21598 Filed 8–20–02; 3:57 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46364; File No. SR–Amex–2002–62]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Amending Amex Rule 174 To Provide for Dissemination of a Depth Indication

August 15, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 19, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On August 2, 2002, the Amex filed an amendment to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Commentary .03 to Amex Rule 174, Disclosures by Specialists,[4] to provide for dissemination of a depth indication by Exchange specialists. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 174 Disclosures by Specialists [Prohibited]

* * * * *

Commentary .03

(a) On a best efforts basis, the specialist may disseminate a depth indication in any security. Such depth indication may be disseminated for the purpose of indicating that there is additional market interest to buy below the current published bid, or additional market interest to sell above the current published offer, as described in paragraph (b) below. The depth indication shall be disseminated by means of an appropriate symbolic designation, appended to the current published bid and/or offer, as appropriate, but the depth indication shall not itself be deemed to constitute a ''firm quotation'' for purposes of this Rule or Rule 11Ac1–1 under the Securities Exchange Act of 1934.

(b) The depth indication may be disseminated only when there is market interest, consisting of the specialist's proprietary interest as well as interest reflected by orders represented by the specialist as agent (including percentage orders), aggregating such minimum number of shares and range of prices below the published bid or above the published offer as the Exchange deems appropriate and communicates to its membership.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add Commentary .03 to Amex Rule 174, Disclosures by Specialists, to permit Amex specialists to disseminate a depth indication, indicating that there is additional market interest in a security to buy below the current displayed bid or interest to sell above the current displayed offer. The Amex believes this change will enhance market transparency and thereby facilitate execution of orders at the best available price. The depth indication of additional market interest would include specialist proprietary interest, orders on the specialist's book, and other orders, including percentage orders, that the specialist is representing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 1, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange corrected typographical errors in the text of the proposed rule language and requested that the Commission waive the 30-day pre-operative period required under Rule 19b–4(f)(6), 17 CFR 240.19b–4(f)(6). For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 2, 2002.

[4] Prior to this filing, the title of Amex Rule 174 was ''Disclosures by Specialists Prohibited,'' but the rule title will be referred to hereafter in this filing as ''Disclosures by Specialists.''

as agent. A specialist would disseminate a depth indication on a ''best efforts basis,'' exercising professional judgment based on current market conditions.

The depth indication would not include the actual number of shares available at better prices, but would provide information that a minimum aggregate number of shares is available within a specified variation from the current bid or offer. The Exchange would establish and communicate the parameters to specialists and other members and member organizations, as well as any change to those parameters based on the Exchange's experience. At the start-up of dissemination of the depth indication, the indication would signify that there is additional market interest aggregating 20,000 shares within $0.15 below the published bid or above the published offer or both. Any change to these parameters will be filed with the Commission pursuant to Section 19(b) of the Act.[5] The depth indication would be disseminated over the Consolidated Quotation System (''CQS''). The depth indication would be for informational purposes only and would not constitute a firm quotation for purposes of Amex rules or the SEC's Firm Quote Rule.[6] The Exchange has determined to implement these procedures on a Floor-wide basis to all equities, including Exchange-Traded Funds.

The proposed depth indication procedures and share/price parameters relating to the depth indication are similar to those filed and implemented by the New York Stock Exchange, Inc. (''NYSE'').[7] The Amex's proposal differs from the NYSE's in that, in addition to the depth indication, the NYSE proposed to implement a ''depth condition,'' which would be disseminated via the NYSE's proprietary distribution network, and which would show the actual number of shares of additional market interest at a particular price below the published bid or above the published offer, with no specified minimum number of shares or range of prices below (above) the bid (offer). The Amex is not proposing to implement a depth condition at this time.

The Exchange is also amending the captioned title for Amex Rule 174 to delete the word ''prohibited.'' Amex believes this amendment is appropriate because Amex Rule 174 currently deals principally with information that a specialist is permitted to disclose rather than information prohibited to be disclosed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and the provisions of Section 6(b)(5) of the Act,[9] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[12] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

The Amex has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date should provide immediate additional market transparency regarding interest within specified size and price parameters. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–62 and should be submitted by September 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21429 Filed 8–21–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b).

[6] Rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1.

[7] *See* Securities Exchange Act Release No. 44084 (March 16, 2001), 66 FR 16307 (March 23, 2001) (SR–NYSE–2001–06).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] As required under Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date. *See* letter from Michael Cavalier, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated June 18, 2002.

[13] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46370; File No. SR–CBOE–2002–29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Index-Linked Exchangeable Notes

August 16, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 7, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 on August 12, 2002.[3] The Exchange filed Amendment No. 2 on August 16, 2002.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change and Amendments Nos. 1 and 2 thereto.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt listing standards for a new product to be known as index-linked exchangeable notes. The text of the proposed rule change, as amended, follows. Additions are in *italics.*

* * * * *

CHAPTER I

Definitions

Rule 1.1 (a)–(yy) No Change.

* * * * *

* * * Interpretation and Policies:

.01–.04 No Change.

.05 The term Index-Linked Exchangeable Note means an exchangeable debt security that is exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchange a specified minimum amount of notes), on call by the issuer, or at maturity for a cash amount based on the reported market prices of the underlying stocks of an underlying index.

* * * * *

Rule 31.5 (A)–(N) No Change.

(O) Index-Linked Exchangeable Notes

Index-Linked Exchangeable Notes, which are debt securities that are exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchange a specified minimum of notes), on call by the issuer or at maturity for a cash amount (''Cash Amount'') based on the reported market prices of underlying stocks of an underlying index, will be considered for listing and trading on the Exchange pursuant to Rule 19b–4e under the Securities Exchange Act of 1934, provided:

(a) Both the issue and the issuer of such security shall meet the criteria set forth in Rule 31.5(F)(a)–(c), except that the minimum public distribution shall be 150,000 notes with a minimum of 400 public note-holders, except if traded in thousand dollar denominations, then no minimum number of holders.

(b) The notes have an original term to maturity of one year.

(c) Index-linked exchangeable notes will be treated as equity securities for margin and all other purposes.

(d) The issuer shall be expected to have a minimum tangible net worth in excess of $250,000,000 and to otherwise substantially exceed the earnings requirements set forth in Rule 31.5(A)(2). In the alternative, the issuer will be expected:

(i) To have a minimum tangible net worth of $150,000,000 and to otherwise substantially exceed the earnings requirements set forth in 31.5(A)(2); and

(ii) Not to have issued index-linked exchangeable notes where the issue price of all the issuer's other index-linked exchangeable note offerings (combined with other index-linked exchangeable note offerings) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth. In the case of an issuer which is unable to satisfy the earnings criteria set forth in CBOE Rule 31.5(A)(2), then the Exchange generally will require the issuer to have the following: (i) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million.

(e) Any index to which an exchangeable note is linked shall either be: (i) An index that has been created by a third party and has been approved for the trading of options or other derivative securities (each, a ''Third Party Index'') either by the Commission under section 19(b)(2) of the Securities Exchange Act of 1934, as amended (''Act'') and the rules thereunder or by the Exchange under rules adopted pursuant to Rule 19b–4(e); and, additionally, the securities underlying the Third Party index must be issued by a company that has a continuous reporting obligation under the Act and the security must be listed on a national securities exchange or the Nasdaq National Market and be subject to last sale reporting pursuant to Rule 11Aa3–1 under the Act, and the Third Party Index shall comply with Rule 24.2(b)(12); or (ii) an index in which the issuer has created and for which an Exchange will have obtained approval from either the Commission pursuant to Rule 19(b)(2) and rules thereunder, or from the Exchange under rules adopted pursuant to Rule 19b–4(e). The Issuer Indices and their underlying securities must meet one of the following:

(i) The procedures and criteria set forth in CBOE Rule 24.2(b)–(c); or

(ii) The criteria set forth in CBOE Rules 31.5(I)(d)–(i), Interpretation and Policies .04 and .06 to Rule 31.5(I), Rule 24.2(b)(12), and the index concentration limits so established in CBOE Rule 24.2(b)(6) and Rule 24.2(c)(1) as it relates to Rule 24.2(b)(12).

(f) Beginning twelve (12) months after the initial issuance of a series of index-linked exchangeable notes, the Exchange will consider the suspension of trading in or removal from listing of that series of index-linked exchangeable notes under any of the following circumstances:

(i) If the series has fewer than 50,000 notes issued and outstanding;

(ii) If the market value of all index-linked exchangeable notes of that series issued and outstanding is less than $100,000,000; or

(iii) If such other event shall occur or such other condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On August 12, 2002, the Exchange filed a Form 19b–4, which replaced the original filing in its entirety (''Amendment No. 1''). In Amendment No. 1, the Exchange corrected typographical errors and amended the proposed rule text to conform it to those previously approved by both the American Stock Exchange LLC (''Amex'') and the Philadelphia Stock Exchange, Inc. (''Phlx''). *See* Securities Exchange Act Release No. 44621 (July 30, 2001), 66 FR 41064 (August 6, 2001); and Securities Exchange Act Release No. 45082 (November 19, 2001), 66 FR 59282 (November 27, 2001).

[4] *See* letter from Jim Flynn, Attorney, CBOE, to Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated August 15, 2002 (''Amendment No. 2''). In Amendment No. 2, CBOE made a change to the proposed rule text to conform it to those previously approved by both the Amex and Phlx. *See* Securities Exchange Act Release No. 44621, *supra* note 3; and Securities Exchange Act Release No., *supra* note 3.

* * * *Interpretations and Policies:*

.01 The Exchange will not consider for listing any index-linked exchangeable note linked to an unsponsored ADR without the prior consent of the Commission staff.

.02 In the event the Exchange wants to list an index-linked exchangeable note which will pay interest at a floating rate, the Exchange will notify the Commission staff before listing such index-linked exchangeable note.

.03 Each member organization transacting business on behalf of customers in index-linked exchangeable notes must comply with the requirements of Rule 30.50(c) concerning a member organization's duty to know its customers and approve its customers' accounts.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to adopt listing standards for Index-Linked Exchangeable Notes. Under CBOE Rule 31.5(F) (*Other Securities*), the Exchange may approve for listing and trading, securities which cannot be otherwise covered by the listing criteria for common and preferred stocks, bonds, debentures, or warrants. CBOE now proposes to list for trading, under new Exchange Rule 31.5(O), index-linked exchangeable notes that are designed to allow investors to hold a single, exchange-listed note exchangeable for the cash value of the underlying stocks (''Underlying Stocks'') of an index (''Underlying Index,'' or ''Index'') and thereby acquire, in a single security and single trade, exposure to a specific index of Underlying Securities.

A. Index-Linked Exchangeable Notes Generally

Description. Index-Linked Exchangeable Notes are debt securities that are exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchanges a specified minimum amount of notes), on call by the issuer, or at maturity for a cash amount (the ''Cash Value Amount'') based on the reported market prices of the underlying stocks of an underlying index. Each index-linked exchangeable note is intended to provide investors with an instrument that closely tracks the Underlying Index. Notwithstanding that the notes are linked to an index, they will trade as a single security. The linkage is on a 1-to-1 basis so that a holder of notes is fully exposed to depreciation and appreciation of the Underlying Stocks.[5] The Exchange will disseminate, on a real-time basis for each series of index-linked exchangeable notes, an estimate, updated every 15 seconds, of the value of a note of that series.[6] This will be based, for example, upon current information regarding the value of the Underlying Index. The value for any newly created index shall be disseminated by the Exchange on a real time basis and updated every 15 seconds.

Index-linked exchangeable notes are expected to trade at a lower cost than the cost of trading each of the Underlying Stocks separately,[7] and also to give investors the ability to maintain index exposure without any management or administrative fees and ongoing expenses. The initial offering price for an index-linked exchangeable note will be established on the date the note is priced for sale to the public. In addition, unlike many hybrid products, index-linked exchangeable notes will not include embedded options or leverage. Because index-linked exchangeable notes are debt securities, holders will not be recognized by issuers of the Underlying Stocks as the owner of those stocks and holders will have no rights as a stockholder with respect to those stocks.

Additional issuances of series of index-linked exchangeable notes may be made subsequent to the initial issuance of that series, and prior to the maturity of that series, for purposes of providing market liquidity. Each series of index-linked exchangeable notes may or may not provide for quarterly interest coupons based on dividends or other cash distributions paid on the Underlying Stocks during a prescribed period and an annual supplemental coupon based on the value of the Underlying Index during a prescribed period. Index-linked exchangeable notes will generally be acquired, held, or transferred only in round-lot amounts, or multiples thereof, of 100 notes, although odd-lot orders are permissible.

Beginning on a specified date, and up to a specified date prior to the maturity date or any call date, the holder of an index-linked exchangeable note may exchange some or all of its index-linked exchangeable notes for their Cash Value Amount plus any accrued, but unpaid, quarterly interest coupons. Holders will generally be required to exchange a certain specified minimum amount of index-linked exchangeable notes, although this minimum requirement may be waived following a downgrade in the issuer's credit rating below specified thresholds or the occurrence of other specified events.

Index-linked exchangeable notes may be subject to call by the issuer on specified dates or during specified periods, upon at least 30, but not more than 60, days notice to holders. The call price would be equal to the Cash Value Amount, plus any accrued but unpaid quarterly interest coupons.

At maturity, the holder of an index-linked exchangeable note will receive a cash amount equal to the Cash Value Amount plus any accumulated, but unpaid, quarterly and annual supplemental interest coupons. Although a specific maturity date will not be established until the time of the initial offering of a series of index-linked exchangeable notes, the index-linked exchangeable notes will provide for maturity within a period of not less than one nor more than thirty years from the date of issue.

B. Criteria for Initial and Continued Listing

Initial Listing. In connection with the initial listing of each series of index-linked exchangeable notes, at the time trading would begin, both the issue and issuer of such security must meet the criteria set forth in Rule 31.5(F), except that the minimum public distribution shall be 150,000 notes with a minimum of 400 public note-holders, and, if traded in thousand dollar denominations, then no minimum number of holders is required.

[5] Telephone conversation between Jim Flynn, Attorney, CBOE, and Christopher Solgan, Law Clerk, Division, Commission, on August 15, 2002.

[6] Where the Issuer of the index-linked exchangeable note disseminates the estimate of the value of the note through another exchange, the CBOE will ensure that such value is being disseminated by such other exchange on a real-time basis and updated every 15 seconds.

[7] CBOE forwards that this would be due to reduced commission and custody costs.

Continued Listing. Beginning twelve months after the initial issuance of a series of index-linked exchangeable notes the Exchange will consider the suspension of trading in, or the removal from listing of, those series of index-linked exchangeable notes upon the occurrence of any of the following circumstances: (i) If the series has fewer than 50,000 notes issued and outstanding; (ii) if the market value of all index-linked exchangeable notes of that series issued and outstanding is less than $1 million; or (iii) if such other event shall occur or such other condition exist which, in the opinion of the Exchange, makes further dealings on the Exchange unadvisable.

C. Eligibility Standards for Issuers

The following standards shall apply to each issuer of index-linked exchangeable notes:

(i) *Assets/Equity:* The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer that is unable to satisfy the earnings criteria set forth in the first sentence of CBOE Rule 31.5(A)(2), the Exchange generally will require the issuer to have the following: (A) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (B) assets in excess of $100 million and stockholders' equity of at least $20 million.

(ii) *Distribution:* Minimum public distribution of 150,000 notes with a minimum of 400 public noteholders, except, if traded in thousand dollar denominations, then no minimum number of holders.

(iii) *Principal Amount/Aggregate Market Value:* Not less than $4 million.

(iv) *Tangible Net Worth:* The issuer will be expected to have a minimum tangible net worth in excess of $250 million, and to otherwise substantially exceed the earnings requirements set forth in CBOE Rule 31.5(A)(2). In the alternative, the issuer will be expected: (A) To have a minimum tangible net worth of $150 million, and to otherwise substantially exceed the earnings requirements set forth in CBOE Rule 31.5(A)(2); and (B) not to have issued index-linked exchangeable notes where the original issue price of all the issuer's other index-linked exchangeable note offerings (combined with other index-linked exchangeable note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

D. Description of the Underlying Indices

Underlying Indices will either be: (i) Indices that have been created by a third party and have been reviewed and approved for the trading of options or other derivative securities (each, a Third Party Index) either by the Commission under Section 19(b)(2) of the Act,[8] and the rules thereunder, or by the Exchange under rules adopted pursuant to Rule 19b–4(e),[9] or (ii) indices which the issuer has created and for which an Exchange will have obtained approval either from the Commission pursuant to Section 19(b)(2) of the Act,[10] and rules thereunder, or from the Exchange under rules adopted pursuant to Rule 19b–4(e)[11] (''Issuer Index'').

All changes to an Underlying Index, including the deletion and addition of Underlying Stocks, index rebalancing, and changes to the calculation of the index, will be made in accordance with the Commission's Section 19(b)(2) order or the Exchange rules under which that index was approved, as the case may be.

The Underlying Index will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar, or modified equal-dollar weighting methodology. If the issuer or a broker-dealer is responsible for maintaining (or has a role in maintaining) the Underlying Index, it would be required to erect and maintain a ''Fire Wall,'' in a form satisfactory to the Exchange, to prevent the flow of information regarding the Underlying Index from the index production personnel to the sales and trading personnel, and the index must be calculated by a third party who is not a broker-dealer.

E. Eligibility Standards for Underlying Stocks

The following standards shall apply to each Underlying stock:

(i) *General Criteria:* Each issuer of an Underlying Stock shall be an Exchange Act reporting company that is listed on a national securities exchange or is traded through the facilities of a national securities association and is subject to last sale reporting.

(ii) *Criteria Applicable to Underlying Stocks of Third-Party Indices:* In addition to meeting the ''General Criteria'' set forth under clause (d)(i) above, each Underlying Stock of a Third-Party Index shall also meet the criteria specified for Underlying Stocks of that index in the Commission's Section 19(b)(2) order approving that index or the Exchange rules under which it was approved.

(iii) *Criteria Applicable to Underlying Stocks of Issuer Indices:* In addition to meeting the ''General Criteria'' set forth under clause (d)(i) above, each Underlying Stock of an Issuer Index shall also meet the criteria specified in (A) or (B) below:

(A) Each Underlying Stock of an Issuer Index shall meet each of the following criteria:

(1) A minimum market value of at least $75 million, except that for each of the lowest weighted Underlying Stocks in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least $50 million;

(2) Trading volume in each of the last six months of not less than 1 million shares, except that for each of the lowest weighted Underlying Stocks in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;

(3) In a capitalization-weighted index, the lesser of the five highest weighted Underlying Stocks in the index or the highest weighted Underlying Stocks in the index that, in the aggregate, represent at least 30% of the total number of Underlying Stocks in the index, each have an average monthly trading volume of at least 2 million shares over the previous six months;

(4) 90% of the index's numerical index value and at least 80% of the total number of Underlying Stocks will meet the current criteria for standardized option trading set forth in CBOE Rule 5.3;

(5) American Depositary Receipts (''ADRs'') that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index;

(6) All component stocks or ADRs will either be listed on the American Stock Exchange or the New York Stock Exchange or traded through the facilities of the Nasdaq and reported National Market System (''NMS'') securities; and

(7) No Underlying Stock will represent more than 25% of the weight of the index, and the five highest weighted Underlying Stocks in the index will not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 Underlying Stocks).

(8) The standards set forth in clauses (1) to (7) above must be continuously maintained, except that:

(a) The criteria that no single Underlying Stock represent more than 25% of the weight of the index and the five highest weighted Underlying Stocks in the index cannot represent more than

[8] 15 U.S.C. 78s(b).

[9] 17 CFR 240.19b–4(e).

[10] 15 U.S.C. 78(s)b.

[11] 17 CFR 240.19b–4(e).

50% (or 60% of indices with less than 25 Underlying Stocks) of the weight of the index, need only be satisfied for capitalization-weighted and price-weighted indices as of the first day of January and July of each year;

(b) The total number of Underlying Stocks in the index may not increase or decrease by more than 33⅓rd% from the number of Underlying Stocks in the index at the time of its initial listing, and in no event may be fewer than nine Underlying Stocks;

(c) The trading volume of each Underlying Stock in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted Underlying Stocks in the index that in the aggregate account for no more than 10% of the weight of the index trading volume must be at least 400,000 shares for each of the last six months; and

(d) In a capitalization-weighted index, the lesser of the five highest weighted Underlying Stocks in the index or the highest weighted Underlying Stocks in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1 million shares over the previous six months.

(B) In the alternative, each Underlying Stock of an Issuer Index shall meet each of the following criteria:

(1)(a) A minimum market capitalization of $3 billion and during the 12 months preceding listing is shown to have traded at least 2.5 million shares; (b) a minimum market capitalization of $1.5 billion and during the 12 months preceding listing is shown to have traded at least 10 million shares; or (c) a minimum market capitalization of $500 million and during the 12 months preceding listing is shown to have traded at least 15 million shares;

(2) No Underlying Stock will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% of the weight of the index (60% from an index consisting of fewer than 25 component securities), except that for capitalization-weighted and price-weighted indices, these standards need be satisfied only as of the first day of January and July in each year;

(3) If any Underlying Stock is the stock of a non-U.S. company that is traded in the U.S. market as sponsored American Depositary Shares (''ADS'') or ADRs then for each such security the Exchange shall either:

(a) Have in place a comprehensive surveillance sharing agreement with the primary exchange on which each security underlying the ADS or ADR is traded;

(b) The combined trading volume of each non-U.S. security and other related non-U.S. securities occurring in the U.S. market or in markets with which the Exchange has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADS) at least 50% of the combined worldwide trading volume in each non-U.S. security, other related non-U.S. securities, and other classes of common stock related to each non-U.S. security over the six-month period preceding the date of listing of the related index-linked exchangeable note; or (c)(i) The combined trading volume of each non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in each non-U.S. security and in other related non-U.S. securities over the six-month period preceding the date of listing of the related index-linked exchangeable note; (ii) the average daily trading volume for each non-U.S. security in the U.S. markets over the six months preceding the date of listing of the related index-linked exchangeable note is 100,000 or more shares; and (iii) the trading volume is at least 60,000 shares per day in the U.S. markets on a majority of the trading days for the six months preceding the date of listing of the related index-linked exchangeable note.

(4) An Underlying Stock may not exceed 5% of the total outstanding common shares of the issuer of that Underlying Stock, however, if any Underlying Stock is a non-U.S. security represented by ADSs, common shares, or otherwise, then for each such index-linked exchangeable note the instrument may not exceed

(a) 2% of the total shares outstanding worldwide provided at least 20% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six-month period preceding the date of listing occurs in the U.S. market;

(b) 3% of the total worldwide shares outstanding provided at least 50% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six-month period preceding the date of listing occurs in the U.S. market; and

(c) 5% of the total shares outstanding worldwide provided at least 70% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six-month period preceding the date of listing occurs in the U.S. market.

(5) If any non-U.S. security and related securities has less than 30% of the worldwide trading volume occurring in the U.S. market during the six-month period preceding the date of listing, then the instrument may not be linked to that non-U.S. security.

If an issuer proposes to list an index-linked exchangeable note that relates to more than the allowable percentages set forth above, the Exchange with the concurrence of the staff of the Division, will evaluate the maximum percentage of index-linked exchangeable notes that may be issued on a case-by-case basis. If an Underlying Stock to which an index-linked exchangeable note is to be linked is the stock of a non-U.S. company which is traded in the U.S. market as a sponsored ADS, ordinary shares or otherwise, then the minimum number of holders of such Underlying Stock shall be 2,000.

F. Exchange Rules Applicable to Index-Linked Exchangeable Notes

Index-linked exchangeable notes will be treated as equity instruments. Index-linked exchangeable notes will be subject to all Exchange rules governing the trading of equity securities, including provisions of CBOE Rule 30.76 (Trade-Through Rule), which prohibits Exchange members from initiating trade-throughs for ITS securities, as well as Exchange rules governing priority, parity and precedence of orders, market volatility-related trading halt provisions and responsibilities of market-makers.[12] Exchange equity margins will apply to the trading in index-linked exchangeable notes.

Prior to the commencement of trading in index-linked exchangeable notes, the Exchange will issue a circular to members highlighting the characteristics of index-linked exchangeable notes, including, but not limited to: That the notes are subject to call by the issuer; that members must adhere to the procedures established under CBOE Rule 9.7 in the opening of new accounts; that the Exchange may consider factors such as those set forth in CBOE Rule 24.7 in exercising its discretion to halt or suspend trading; and that trading will be halted in the event that market volatility parameters set forth in CBOE Rule 6.3B have been reached.

[12] However, CBOE represents that if index-linked exchangeable notes are traded only in round lots (or round-lot multiples), the Exchange's rules relating to odd-lot executions will not apply.

Lastly, the Exchange's surveillance procedures for index-linked exchangeable notes will be similar to the procedures used for equity-linked term notes, index portfolio receipts trust issued receipts, and other equity non-option products traded on the CBOE and will incorporate and rely upon existing CBOE surveillance systems. The Exchange will closely monitor activity in index-linked exchangeable notes to identify and deter any potential improper trading activity in the index-linked exchangeable notes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [13] in general and furthers the objectives of Section 6(b)(5) [14] in particular in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest, by increasing trading opportunities which should, in turn, increase the depth and liquidity of the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2002–29 and should be submitted by September 12, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change and Amendment Nos. 1 and 2 thereto are consistent with the requirements of Section 6(b)(5) of the Act [15] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the Exchange's proposal to list and trade index-linked exchangeable notes will provide an instrument for investors to achieve desired investment objectives through the purchase of debt securities—index-linked exchangeable notes—exchangeable for the cash value of the Underlying Stocks of an Underlying Index.[16] Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[17] Furthermore, the Commission has approved the trading of identical products on the Amex [18] and the Phlx.[19]

The Commission notes that the initial offering price of an index-linked exchangeable note will be determined on the date that the note is priced for sale to the public. The Commission believes that index-linked exchangeable notes will be attractive to investors because they are expected to trade at lower cost than the cost of trading each of the Underlying Stocks separately. The Commission also notes that the Exchange will disseminate an estimate of the value of a note for each series of index-linked exchangeable notes, on a real time basis, every 15 seconds. The value of any Underlying Index will also be publicly available to investors on a real time basis. The CBOE, for example, has stated that to the extent there is an existing Index, it will ensure its value is publicly available, and if it is a new Index, that the CBOE would publish the value itself on a real time basis. This will ensure investors receive up-to-date information on the value of the note and the Underlying Index. Accordingly, index-linked exchangeable notes should allow investors to: (i) Respond quickly to market changes through intra-day trading opportunities; (ii) engage in hedging strategies not currently available to retail investors; and (iii) reduce transaction costs for trading a group or index of securities.

Although the value of index-linked exchangeable notes will be based on the value of the Underlying Stocks in an Underlying Index, index-linked exchangeable notes are not leveraged instruments.[20] In essence, index-linked exchangeable notes are debt securities based on the Underlying Stocks of an Underlying Index; the holders of such notes will not be considered owners of the Underlying Stocks and will not have the rights of a stockholder in those stocks. However, index-linked exchangeable notes will be regulated as equity instruments and will be subject to all of the Exchange's rules governing the trading of equity securities. Nevertheless, the Commission believes that the unique nature of index-linked exchangeable notes, related to, among

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] Index-linked exchangeable notes will generally be acquired, held or transferred only in round-lot amounts (or round-lot multiples) of 100 notes although odd-lot orders are permissible. Although these notes will have features similar to other index related products, they differ from other products with respect to their exchangeability feature. The Commission notes that the holder of the note may exchange the notes at his or her option, on call by the issuer, or at maturity for the cash value based upon the reported market prices of the Underlying Stocks of an Underlying Index. Holders, however, will generally be required to exchange a certain specified minimum amount of index-linked exchangeable notes, although this minimum requirement may be waived following a downgrade in the issuer's credit rating below specified thresholds or the occurrence of other specified events.

[17] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[18] *See* Securities Exchange Act Release No. 44621, *supra* note 3.

[19] *See* Securities Exchange Act Release No. 45082, *supra* note 3.

[20] In contrast, proposals to list exchange-traded derivative products that contain a built-in leverage feature or component raise additional regulatory issues, including heightened concerns regarding manipulation, market impact, and customer suitability. *See, e.g.,* Securities Exchange Act Release No. 36165 (August 29, 1995), 60 FR 46653 (September 7, 1995) (relating to the establishment of uniform listing and trading guidelines for stock index, currency, and currency index warrants).

other things, the exchangeability feature,[21] raise certain product design, disclosure, trading, and other issues that must be addressed.

A. Index-Linked Exchangeable Notes Generally

The Commission believes that the proposed index-linked exchangeable notes are reasonably designed to provide investors with an investment vehicle that substantially reflects the value of the Underlying Stocks of an Underlying Index. Index-linked exchangeable notes will be treated as equity instruments subject to CBOE rules governing the trading of equity securities. As such, the Commission finds that adequate rules and procedures exist to govern the trading of index-linked exchangeable notes. In this regard, the Commission notes that the Exchange will impose specific criteria in the selection of issuers, the Underlying Stocks, and the Underlying Indices.

As noted above, the CBOE rules for index-linked exchangeable notes contain specific criteria for issuers. For example, the issuer must have a minimum tangible net worth in excess of $250 million and substantially exceed the earnings requirements in the first sentence of CBOE Rule 31.5(A)(2); or a minimum tangible value of $150 million, substantially exceed the earnings requirements in the first sentence of CBOE Rule 31.5(A)(2), and not to have issued index-linked exchangeable notes where the original issue price of all the issuer's other index-linked exchangeable note offerings (combined with other index-linked exchangeable note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth. These criteria are in part intended to ensure that the issuer has enough assets to meet its obligations under the terms of the note and should help to reduce systematic risk.

The minimum issue requirements for the issue of index-linked exchangeable notes should also serve to establish a minimum level of liquidity for the product. These issue requirements include: (i) A minimum public distribution of 150,000 notes with a minimum of 400 public noteholders (no minimum number of holders if traded in one thousand dollar denominations), and (ii) market value of $4 million.

The CBOE rules applicable to the index-linked exchangeable notes also contain minimum requirements for the Indices the note can be linked to and the underlying components of those Indices. For example, because all components of an Underlying Index must be a U.S. reporting company, there will be information of available Index component stocks. Further, the CBOE's proposed rules for the Indices underlying index-linked exchangeable notes are linked to other approved criteria for index related products. Accordingly, any Underlying Index would have to follow the criteria adopted by the Commission for that Index, including the criteria for component stocks already in CBOE's rules. These requirements will generally contain, among other things, minimum market capitalization, trading volume, and concentration requirements that are designed to reduce manipulation concerns and ensure a minimum level of liquidity for component securities.

In summary, the rules for selecting components of Indices are intended to make the Underlying Stocks and the Underlying Indices representative of the market they are intended to reflect as well as to reduce manipulation concerns by setting forth minimum liquidity standards for Underlying Stocks. Accordingly, the Commission believes that these criteria should serve to ensure that the Underlying Stocks of Underlying Indices are well capitalized and actively traded.

B. Disclosure

The Commission believes that the Exchange's proposal should ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading index-linked exchangeable notes. The Commission notes that upon the initial listing of any class of index-linked exchangeable notes, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of security.[22] The circular will also note Exchange members' responsibilities under CBOE Rule 30.50(c) regarding transactions in index-linked exchangeable notes. CBOE Rule 30.50(c) generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.[23] Exchange Rule 30.50(c) further requires that members be personally informed of the essential facts of each customer prior to giving the required written approval for the opening of that customer account.[24]

C. Trading of Index-Linked Exchangeable Notes

The Commission finds that adequate rules and procedures exist to govern the trading of index-linked exchangeable notes. Index-linked exchangeable notes will be treated as equity instruments subject to all CBOE rules governing the trading of equity securities. These rules include: rules governing priority, parity and precedence of orders, market volatility related trading halt provisions pursuant to Exchange Rule 6.3B, responsibilities of specialists, members dealing for their own accounts, odd-lot brokers, and registered traders, and handling of orders and reports. In addition, the Exchange's equity margin rules and the regular equity trading hours of 9:30 am to 4:00 pm will apply to transactions in index-linked exchangeable notes.

The Commission is satisfied with CBOE's development of specific listing and delisting criteria for index-linked exchangeable notes. For example, in connection with the initial listing of each series of index-linked exchangeable notes, the Exchange has established that a minimum of 150,000 notes held by at least 400 holders be required to be outstanding when trading begins. These criteria should help ensure that a minimum level of liquidity will exist in each series of index-linked exchangeable notes to allow for maintenance of fair and orderly markets. The delisting criteria also allows the Exchange to consider suspension of trading and the delisting of a series of index-linked exchangeable notes if an event were to occur that made further dealings in such series inadvisable. This will give the CBOE flexibility to delist index-linked exchangeable notes if circumstances warrant such action. Further, CBOE rules have specific criteria that allow them to delist if there is fewer than 50,000 notes issued and outstanding, or if the market value of the index-exchangeable notes is less than $100,000. This should ensure a minimum level of liquidity for these products. Accordingly, the Commission believes that the rules governing the trading of index-linked exchangeable notes, consistent with Section 6(b)(5) of the Act,[25] provide adequate safeguards to protect investors and the public interest. While the index-linked exchangeable notes have certain call and redemption features that make them different from other products, the CBOE

[21] *See supra* note 15.

[22] The Exchange represents that it will highlight the exchangeability feature of index-linked exchangeable notes in its circular to members.

[23] CBOE Rule 30.50(c).

[24] *Id.*

[25] 15 U.S.C. 78f(6)(5).

has addressed any concerns by adopting the existing criteria used in other index related products. In addition, the CBOE will highlight these different features in the circular to members.

D. Dissemination of Information

The Commission believes that the value of index-linked exchangeable notes that the Exchange proposes to disseminate will provide investors with timely and useful information concerning the value of the index-linked exchangeable notes based on current information regarding the value of the Underlying Index. The value of the Underlying Index will also be publicly disseminated. This information will be disseminated and updated every 15 seconds during regular CBOE trading hours of 8:30 a.m. to 3 p.m., Chicago time.

E. Surveillance

The Commission believes that the surveillance procedures developed by the CBOE for index-linked exchangeable notes should be adequate to address concerns associated with the listing and trading of such notes. In this regard, the CBOE has developed procedures to monitor activity in index-linked exchangeable notes to identify and deter improper trading activity.

The Commission also notes that concerns are raised when a broker-dealer is involved in the development and maintenance of an Underlying Index upon which a product, such as index-linked exchangeable notes is based, in that case, the broker-dealer and its affiliate should have procedures designed specifically to address the improper sharing of information. The Commission notes that the Exchange requires the implementation of procedures that are satisfactory to the Exchange to prevent the misuse of material, non-public information regarding changes to Underlying Stocks of an Underlying Index in a particular series of index-linked exchangeable notes. In addition, the Commission notes that if a broker-dealer is involved in developing or maintaining an Underlying Index, the Index must be calculated by a third party who is not a broker-dealer.[26] The Commission believes that such information barrier procedures will address the unauthorized transfer and misuse of material, non-public information.

F. Scope of the Commission's Order

The Commission is approving the Exchange's proposed listing and trading standards for the index-linked exchangeable notes as discussed herein. Index-linked exchangeable notes addressed in this order can be listed pursuant to Rule 19b–4(e)[27] if they meet the standards discussed above in the CBOE rules. The Commission notes that with respect to any future rules adopted by the Exchange pursuant to Rule 19b–4(e),[28] the Exchange has indicated that in its Section 19(b)(2) filings to adopt such new rules, it will state and discuss whether or not it proposes to apply the new rule standards to index-linked exchangeable notes.

G. Accelerated Approval

The Commission finds good cause for approving the proposal and Amendments Nos. 1 and 2 thereto prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The proposal establishes listing and trading standards for a new product, index-linked exchangeable notes. Granting accelerated approval will allow the Exchange to immediately begin listing and trading series of index-linked exchangeable notes under these new standards. While the structure of the product is different from those previously reviewed by the Commission, the CBOE proposes to apply existing criteria used for other index related products. In addition, the Commission has approved the trading of identical products on the Amex[29] and the Phlx.[30] Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[31] to approve the proposal and Amendments Nos. 1 and 2 thereto on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–CBOE–2002–29) and Amendments Nos. 1 and 2 thereto are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

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[26] *See* CBOE Rule 24.2(b)(12).

[27] 17 CFR 240.19b–4(e).

[28] 17 CFR 240.19b–4(e).

[29] *See* Securities Exchange Act Release No. 44621, *supra* note 3.

[30] *See* Securities Exchange Act Release No. 45082, *supra* note 3.

[31] 15 U.S.C. 78f(b)(5) and 78s(b).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46369; File No. SR–NASD–2002–42]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change and Amendments Nos. 1, 2, 3, 4, 5 and 6 Thereto by the National Association of Securities Dealers, Inc. Relating to the Integrated Processing of Odd-Lot Share Amounts in Nasdaq's SuperMontage System

August 16, 2002.

I. Introduction

On March 25, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend several NASD Rules governing the operation of Nasdaq's future Order Display and Collector Facility (''SuperMontage'') to allow the system to accept, integrate, process, and otherwise facilitate the interaction of orders of less than one round-lot (100 shares) with all other SuperMontage quotes and orders. Nasdaq filed Amendment No. 1 to the proposed rule change on April 23, 2002.[3] Nasdaq filed Amendment No. 2 to the proposed rule change on May 17, 2002.[4] Nasdaq filed Amendment No. 3 to the proposed rule change on May 17, 2002.[5] The proposed rule change, as amended by Amendments Nos. 1, 2, and 3, was published for comment in the **Federal Register** on May 28, 2002.[6] The Commission received thirteen comment letters on the proposed rule change, as amended.[7] Nasdaq filed Amendment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On April 23, 2002, the Exchange filed a Form 19b–4, which replaced the original filing in its entirety (''Amendment No. 1'').

[4] On May 17, 2002, the Exchange filed a Form 19b–4, which replaced the original filing and Amendment No. 1 in their entirety (''Amendment No. 2'').

[5] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 17, 2002 (''Amendment No. 3'').

[6] *See* Securities Exchange Act Release No. 45968 (May 20, 2002), 67 FR 36946 (''Proposing Release'').

[7] *See* email to rule-comments@sec.gov, Commission, from Joshua Levine, dated May 30, 2002 (''Levine Letter''). *See also* letters to Jonathan G. Katz, Secretary, Commission, from Keith A. Gertsen, Managing Director, Head, Nasdaq Trading,

Continued

No. 4 to the proposed rule change on June 6, 2002.[8] Nasdaq filed Amendment No. 5 to the proposed rule change on August 9, 2002.[9] Nasdaq filed Amendment No. 6 to the proposed rule change on August 13, 2002.[10] This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

As originally approved, SuperMontage included a separate mechanism for processing and executing odd-lot orders at the inside price.[11] Nasdaq now proposes to fully integrate the processing of odd, mixed, and round-lot orders in the SuperMontage Non-Directed Order Process.[12] As such, Nasdaq would not provide a separate process for odd-lot orders in SuperMontage, as originally approved, but instead would allow the entry and execution of orders in any whole share amount from 1 to 999,999 shares.

A. Entry and Display of Quotes/Orders

Under the proposal, all Nasdaq market participants including market makers, Electronic Communication Networks (''ECNs''), order entry firms, and Unlisted Trading Privilege (''UTP'') Exchanges will be able to enter orders into SuperMontage in any whole-share amount from 1 to 999,999 shares. Odd-lot and mixed-lot orders would generally be treated the same as round-lot orders. For instance, odd-lot and mixed-lot orders, like round-lot orders, will receive a time stamp upon entry in the SuperMontage. Market makers and ECNs (''Nasdaq Quoting Market Participants'') and UTP Exchanges will be able to enter odd-lot and mixed-lot orders as market orders or limit orders with any non-directed order designation type permitted by the NASD rules.[13] Odd-lot and mixed-lot orders will be aggregated, decremented, and cancelled under the same terms and conditions as round-lot orders.[14] Odd-lot and mixed-lot orders could be preferenced to other market participants in the same manner as round-lots.[15] While orders originally entered into the SuperMontage as odd-lots would not be able to use reserve size, orders originally entered into the system as mixed-lots could use reserve size.[16]

Under the proposal, all displayed interest in the Nasdaq Order Display Facility (''NODF'') would continue to be in round-lot increments. The NODF, which aggregates all quotes and orders (attributable and non-attributable) at each price level, and displays the five best prices with associated aggregate size on each side of the market, will reflect odd and mixed-lots in the manner described below. For display purposes, Nasdaq would aggregate the shares of the multiple quotes[17] and orders entered by a Nasdaq Quoting Market Participant or UTP Exchange at a single price level and round that total share amount down to the nearest round-lot amount for display and dissemination.[18] Likewise, if a party enters a mixed-lot order, the system would round down the mixed-lot order to the nearest round-lot increment for display in the NODF. Any odd-lot portion of a mixed-lot that is not displayed as a result of this rounding process would remain in the system eligible for execution, with the time-priority of its original entry. Orders originally entered as odd-lots that are not aggregated to any other quotes and orders, and quotes or orders that have been decremented to an odd-lot remainder would not be displayed.

Although the SuperMontage is similar in many respects to Nasdaq's current trading platform, because it is a new system, market participants will have to program their interfaces to enable them to utilize SuperMontage features. For market participants that update their technology to permit them to enter multiple quotes or orders, any insufficient amount of shares at a price level to display a round-lot share amount (*i.e.,* odd-lot remainder) after an execution against its quote/order would remain in the system eligible for execution, unless cancelled by the market participant. Because odd-lots will not be displayed in SuperMontage, the system would display that market participant's next best priced quote/order in a round-lot share amount on that same side of the market if the market participant has attributable and displayable trading interest of at least a single round-lot share amount in the system. If the market participant does not have another quote/order in SuperMontage on a particular side of the market, and the market participant fails to update its quote/order, a new quote/order would be generated using the ''penalty quote refresh'' process.[19]

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and Ken P. Dengler, Managing Director, Head, Nasdaq Sales Trading, Deutsche Bank Securities, Inc., dated June 14, 2002 (''Deutsche Bank Letter''); C. Thomas Richardson, Head, Nasdaq Trading, Salomon Smith Barney, dated June 14, 2002 (''Salomon Letter''); Michael A. Bird, Chairman, and John C. Giesea, President and Chief Operating Officer, Securities Traders Association, dated June 17, 2002 (''STA Letter''); Bruce Turner, CIBC World Markets Corp. (''CIBC''), dated June 6, 2002 (''CIBC Turner Letter''); Scott W. Anderson, Associate Director, Region Americas Legal, USB Warburg LLC, dated June 17, 2002 (''USB Warburg Letter''); Howard Berstein, Vice President, Compliance Department, Robertson Stephens, Inc., dated June 17, 2002, (''Robertson Stephens Letter''); Robert Arancio on behalf of Mathew Johnson, Managing Director, Lehman Brothers Inc., dated June 18, 2002 (''Lehman Letter''); Elliot Levine, Assistant General Counsel and Executive Director, CIBC, dated June 18, 2002 (''CIBC Levine Letter''); John P. Hughes SR. V.P., Director, Nasdaq & Listed Trading, Janney Montgomery Scott LLC, dated June 12, 2002 (''Janney Letter''); Heidi H. Reynolds, Managing Director, Nasdaq Trading, Morgan Keegan & Company, Inc., dated June 14, 2002 (''Morgan Letter''); C.E. Wasson, SVP Director, Nasdaq Trading, Legg Mason, Inc., dated June 20, 2002 (''Legg Mason Letter''); and Gerald D. Putnam, Chairman and CEO, Archipelago Holdings, LLC, dated July 9, 2002 (''Arca Letter'').

[8] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated June 6, 2002 (''Amendment No. 4''). In Amendment No. 4, Nasdaq made technical, non-substantive changes to the proposed rule text, which were reflected in the Proposing Release.

[9] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 9, 2002 (''Amendment No. 5''). In Amendment No. 5, Nasdaq made technical, non-substantive changes to the proposed rule text that are not subject to notice and comment.

[10] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 13, 2002 (''Amendment No. 6''). In Amendment No. 6, Nasdaq amended the text of NASD Rule 4710(b)(2)(A) to reflect recent amendments to the rule. See Securities Exchange Act Release No. 46320 (August 8, 2002) (File No. SR–NASD–2002–84). The Commission notes that this is a technical, non-substantive amendment and not subject to notice and comment.

[11] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (''SuperMontage Order'').

[12] The term ''odd-lot'' refers to an order that is less than 100 shares. The term ''round-lot'' refers to an order in 100 share increments. The term ''mixed-lot'' refers to an order that is comprised of round and odd lots.

[13] *See* NASD Rule 4706(a)(1)(B).

[14] *See* NASD Rule 4710(b).

[15] *See* NASD Rule 4710(b)(1)(B)(iv).

[16] *See* Securities Exchange Act Release No. 46320 (August 8, 2002), 67 FR 53033 (August 14, 2002) (File No. SR–NASD–2002–84).

[17] The Commission notes that the Nasdaq system will continue to display and require the entry of quotes in round-lot increments. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Kelly Riley, Senior Special Counsel, Division, Commission, on July 31, 2002.

[18] For example, if a Nasdaq Quoting Market Participant enters three separate orders to buy 50 shares, 225 shares and 590 shares at the same price level, it would have displayed next to its market identifier on the bid side of the market an aggregate quote size of 800 shares (50 + 225 + 590 = 865, rounded down to 800 shares for display purposes).

[19] Pursuant to NASD Rule 4710(b)(5) if all market maker bids and/or offers are exhausted so that there are no longer any quote or orders displayed on the bid or offer side of the market, and the market maker does not update its principal quote via Auto Quote Refresh (''AQR''), transmit a revised attributable quote/order to Nasdaq, or have another attributable quote or order in the system, the system, after 30 seconds, will refresh only the market maker's exhausted bid or offer quote to a normal unit of trading priced $0.01 inferior to the

The odd-lot remainders of market participants using updated technology would remain in the system, undisplayed, until executed or cancelled, with its original time-stamp of entry.[20]

In the Proposing Release, Nasdaq explained that during the initial SuperMontage roll-out it will also permit participants to access SuperMontage using their current technology (''Legacy Quotes''), but that the use of current technology limits a market participant's ability to use certain SuperMontage features. Most notably, if a participant uses its current technology, it will be unable to enter multiple quotes/orders in SuperMontage. According to Nasdaq, because of the inability of Legacy Quote users to enter multiple quotes/orders, it would also be technologically infeasible for these market participants to simultaneously support a quote/order and an odd-lot remainder in the system. Thus, the odd-lot remainders of Legacy Quote users would be purged from SuperMontage contemporaneous with a market participant's quote or order being refreshed to at least a round-lot amount. The quote of a market participant that uses Legacy Quote technology may be refreshed: (1) By the market participant, (2) using the AQR function to a price and size selected by the entering party,[21] or (3) using the penalty quote refresh process.[22]

Nasdaq Quoting Market Participants and UTP Exchanges entering orders that are at least 100 shares would be able to use the SuperMontage reserve size function.[23] If a quote/order with a reserve size is decremented to an odd-lot remainder, the system would refresh the quote/order from reserve size by an amount designated by the market participant. Any odd-lot remainder available prior to the reserve size refresh would be retained by the system. Thus, the reserve size refresh amount and the odd-lot remainder would be aggregated and displayed.[24]

B. Execution Process

Under the proposal, odd-lots and mixed-lots shall be executed on a share-by-share basis consistent with the SuperMontage order execution algorithms. Like round-lots, odd-lots and mixed-lots would be executed pursuant to the execution algorithm selected (price/time (default), price/time with fee consideration, and price/size/time) by the entering market participant.[25] Accordingly, SuperMontage would not execute an odd or a mixed-lot at an inferior price level until all better-priced share amounts that are in the system, including undisplayed odd-lots, are executed.

Under the proposal, undisplayed odd-lots with a better price than the Nasdaq best bid or offer (''BBO'') would be executed pursuant to the SuperMontage rule for clearing locked and crossed markets.[26] A locked market occurs when a market participant's bid equals the lowest offer of another market participant. A crossed market occurs when a market participant's bid exceeds the lowest offer of another market participant. If a market participant submitted a quote that would lock or cross an undisplayed odd-lot, that market participant would receive a system warning. To complete the quote entry, the participant would have to override the system warning.[27] If a Nasdaq Quoting Market Participant or UTP Exchange used the system override for a quote that would lock or cross an undisplayed odd-lot, the SuperMontage would not display the quote, but instead would reformat the quote as a marketable limit order and enter it into the SuperMontage as a non-directed order for execution. The reformatted order would be routed to the undisplayed odd-lot order next in the queue that would be locked or crossed, and the order would be executed at the price of the undisplayed odd-lot. Once the odd-lot execution takes place, if the Nasdaq Quoting Market Participant or UTP Exchange's quote that would have locked or crossed the odd-lot has not been completely filled, the SuperMontage would reformat the order again and display it (consistent with the parameters of the quote) as a quote on behalf of the entering Nasdaq Quoting Market Participant or UTP Exchange. If the market participant did not override the system warning for a quote/order that would lock or cross an undisplayed odd-lot, the SuperMontage would reject the market participant's quote and return it to the entering party.

C. Trade Reporting

Under the proposal, Nasdaq would continue to disseminate transactions to the public tape, whether it is a round or mixed-lot execution, in round-lot increments. Thus, mixed-lot executions would be rounded down to the next lowest round-lot increment for the purpose of reporting transactions to the public tape. Odd-lot transactions would not be reported to the tape. However, odd-lots and mixed-lots would be included in Nasdaq's daily volume report.

III. Summary of Comments

The Commission received thirteen comment letters on the proposed rule change, all of which supported the proposal.[28] A majority of commenters noted that the proposal should enhance

lesser of either: (a) The last valid displayed inside bid/offer in the security before all such bids/offers were exhausted; or (b) the market maker's last displayed bid/offer before exhaustion. If the resulting bid/offer quote will create a locked or crossed market, SuperMontage will instead re-open the exhausted market maker's bid/offer quote at a price $0.01 inferior to the unexhausted inside bid/offer in that security. If at any time this penalty quote refresh process will result in the creation of a bid/offer of less than $0.01, the system will refresh that bid/offer to a price of $0.01. *See* Securities Exchange Act Release No. 46141 (June 28, 2002), 67 FR 44906 (July 5, 2002) (approving File No. SR–NASD–2002–01).

[20] Market-makers cannot fulfill their quote display obligations through the presence of odd-lot remainders in the system. *See* NASD Rule 4613.

[21] Nasdaq's AQR function will allow Legacy Quote market participants to have their displayed quote refreshed to a pre-determined price and size (round-lot share amount) immediately after its displayed and reserve size at a price level is reduced to less than 100 shares. Any odd-lot share amount present at the time a Legacy Quote market participant's quote is refreshed by AQR shall not be retained in SuperMontage for execution and the system would only recognize and potentially process the round-lot refreshed amount. Market participants using updated technology who have the ability to enter multiple quotes/orders cannot use the AQR function.

[22] Between the time a Legacy Quote user's quote/order is decremented to less than a round-lot share amount and the Legacy Quote user's quote is refreshed pursuant to the penalty quote refresh process (or updated by the transmission of a revised attributable quote) an odd-lot remainder would be eligible for execution in SuperMontage.

[23] Orders originally entered as odd-lots would not be able to use reserve size refresh. *See supra* note and accompanying text.

[24] For example, a market maker (''MMA'') is displaying a 1000 share bid quote. MMA has 5000 shares in reserve and a 500 share refresh size. SuperMontage executes 925 shares against MMA's quote. Upon execution, since MMA's displayable interest is less than 100 shares, the system would refresh MMA's quote by the refresh amount—500 shares, but would also retain the 75 share odd-lot remainder in the system. The resulting 575 share total would remain in the system and available for execution but would be rounded down to 500 shares for display purposes.

[25] The three SuperMontage order execution algorithms will make an exception for non-directed, non-preferenced orders entered by a market maker or ECN when that market maker or ECN's quote/order is at the inside market. *See* NASD Rule 4710(b)(1)(B)(iv).

[26] *See* NASD Rule 4710(b)(3)(A).

[27] Prior to entry, a market participant could append an override instruction to the locking/crossing quote. The system would deliver an execution or a rejection based on the market participant's instructions.

[28] *See supra* note 7. One commenter, however, noted that it would only support approval of the proposed rule change on a pilot basis. This commenter believed that only after SuperMontage becomes operational can a better solution to the odd-lot process become apparent. In addition, the commenter suggested that Nasdaq study the proposed odd-lot process in the SuperMontage environment. *See* UBS Warburg Letter.

both liquidity and transparency.[29] Several commenters believed that the proposal could benefit individual investors by providing small orders with standing along with large orders on the book.[30] Several commenters also believed that the proposed changes would continue to address the gaming issues that the originally approved odd-lot process intended to minimize.[31] Some commenters noted that the proposal would remove the possibility that existed in the previously approved odd-lot process that a market maker might have to execute more shares than it was willing to trade.[32] Finally, a few commenters believed that the proposal would prevent market participants from hiding significant numbers of shares from their quote and the tape by entering multiple odd-lots.[33]

One commenter, while supporting approval of the proposal, suggested modifications.[34] First, the commenter suggested that SuperMontage permit participants to enter multiple quotes/orders with odd-lot and mixed-lot sizes. Second, the commenter suggested that Nasdaq extend its trade reporting rules to cover odd-lot transactions. Finally, the commenter suggested that Nasdaq introduce the actual shares concept to their data feeds (*i.e.,* disseminate the actual size of quotes and orders).

In response to these suggestions, Nasdaq submitted a letter to the Commission.[35] Nasdaq stated that the requirement that initial entry of quotes be in round-lot amounts is based on the concept that a party should not be allowed to initially enter a quotation that is not displayable. With regard to trade reporting and Nasdaq data feeds, Nasdaq stated that expanding the actual shares concept to the dissemination of quotes and orders would raise issues that impact numerous market participants, including data vendors, other markets, the internal systems of broker-dealers, regulators, and public investors.

Finally, one commenter, while supporting Nasdaq's goal of integrating odd-lot orders in the execution process, raised concerns about the technical design of the proposal.[36] Specifically, the commenter expressed concern regarding undisplayed odd-lots orders that have a better price than the displayed BBO. The commenter explained that order-delivery ECNs would have three options when an undisplayed odd-lot order was locked or crossed: (1) Override the lock/cross warning message and receive an automatic execution, (2) accept the lock/cross warning message, have the system reject and return the quotation, and not display it in SuperMontage, or (3) convert the quotation to an order and re-submit it to SuperMontage. The commenter believed that these three options were respectively problematic because: (1) ECNs would be exposed to dual liability, (2) compliance with the Quote Rule [37] would be frustrated, and (3) delays in the entry of trading interest in the system would result.

In response, Nasdaq submitted a letter to the Commission.[38] Specifically, Nasdaq disagrees with the commenter's suggestion that Nasdaq's refusal to display a quotation of an ECN that locks or crosses the market is contrary to its requirements under the Quote Rule. According to Nasdaq, this issue was previously resolved by the Commission both in the context of the Order Handling Rules and the SuperMontage Order. Further, Nasdaq believes that SuperMontage ensures that ECNs are able to make reasonable efforts to trade before entering quotes that would lock or cross the market. Accordingly, Nasdaq believes that ECNs do have the ability to display their trading interest in SuperMontage by converting any locking or crossing quotation into an order or overriding the warning message, which enables ECNs to meet their obligations to display customer orders and also satisfies Nasdaq requirements under the Quote Rule.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[39] The Commission finds that the proposed rule change, as amended, is consistent with Section 15A of the Act.[40] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[41]

With this filing Nasdaq proposes to fully integrate the entry, execution, and processing of odd and mixed-lot orders into SuperMontage. Integrating odd-lot orders into SuperMontage should provide investors with small-sized orders with many system protections that they do not currently enjoy. For example, odd-lot orders and odd-lot portions of mixed-lot orders will participate in the Non-Directed Order Process in virtually the same manner as larger sized round-lot quotes and orders. Under the proposal, odd-lot and mixed-lot orders will achieve price and time priority on the same basis as round-lot orders. Whether the order is an odd, mixed, or round-lot, SuperMontage gives execution priority to the best price in the system (as determined by the order execution algorithm selected by the entering party).[42] Specifically, odd and mixed-lot orders will receive a time stamp upon entry into SuperMontage, which will be effective until the order is fully executed or cancelled. The Commission believes that integrating odd, mixed, and round-lot orders into SuperMontage should provide investors of such orders with better executions and should enhance the integrity of the market.

The Commission believes that the proposal may increase liquidity and transparency in SuperMontage.[43] The integration of odd and mixed-lot orders could increase liquidity since odd-lots and the odd-lot portion of mixed-lot orders will be able to fully interact with the round-lot market. The accessibility and eligibility for execution of odd-lots and the odd-lot portion of mixed-lots should add depth to the market, which also could increase liquidity. Although

[29] *See* Deutsche Bank Letter, Salomon Letter, STA Letter, CIBC Turner Letter, Lehman Letter, CIBC Levine Letter, Janney Letter, and Morgan Letter.

[30] *See* Deutsche Bank Letter, STA Letter, CIBC Turner Letter, Lehman Letter, CIBC Levine Letter, Janney Letter, and Morgan Letter.

[31] *See* CIBC Turner Letter, CIBC Levine Letter, Janney Letter, and Legg Mason Letter.

[32] *See* Deutsche Bank Letter, Salomon Letter, STA Letter, Robertson Stephens Letter, and Lehman Letter.

[33] *See* Deutsche Bank Letter, CIBC Turner Letter, CIBC Levine Letter, and Morgan Letter.

[34] *See* Levine Letter.

[35] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division, Commission, dated July 2, 2002.

[36] *See* Arca Letter.

[37] Exchange Act Rule 11Ac1–1, 17 CFR 240.11Ac1–1.

[38] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division, Commission, dated July 26, 2002.

[39] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[40] 15 U.S.C. 78*o*–3.

[41] 15 U.S.C. 78*o*–3(b)(6).

[42] *See* NASD Rule 4710.

[43] The Commission notes that a majority of commenters believed that the proposal would enhance liquidity and transparency. *See supra* note 29 and accompanying text.

SuperMontage will continue to only display quotes and orders in round-lot increments, the system will aggregate all shares (orders and quotes) entered by a Nasdaq Quoting Market Participant or UTP Exchange, at a single price level and then round that total share amount down to the nearest round-lot amount for display and dissemination. While the actual size of a Nasdaq Quoting Market Participant's trading interest may not be fully displayed, adding odd-lot amounts to the disseminated size of Nasdaq Quoting Market Participants should portray a more accurate representation of trading interest. Thus, the proposal should enhance transparency.

The Commission believes that small retail investors who may find it difficult to participate in the market in full round-lot increments, will be able to have their smaller-sized orders interact with the orders of institutional investors and highly-capitalized individuals. As noted by a commenter, odd-lot orders are employed typically by small investors who cannot afford to transact in full round-lot quantities.[44] Further, the Commission believes that the proposed rule change should give market participants greater flexibility in handling small retail customer orders as market participants will be able to enter odd-lots and mixed-lots in SuperMontage with system protections similar to round-lots.

As previously noted, Nasdaq will continue to only display quotes and orders in round-lot increments.[45] One commenter did express a concern about the presence of undisplayed odd-lot orders that have a better price than the displayed BBO.[46] The commenter explained that order delivery ECNs would have three options when their quote locked or crossed an undisplayed odd-lot order: (1) Override the lock/cross warning message and receive an automatic execution, (2) accept the lock/cross warning message, have the system reject and return the quotation, and not display the order in SuperMontage, or (3) convert the quotation to an order and re-submit it to SuperMontage. The commenter believed that these three options were respectively problematic because: (1) ECNs would be exposed to dual liability, (2) compliance with the Quote Rule[47] would be frustrated, and (3) delays in the entry of trading interest in the system would result. While the Commission appreciates the commenter's concerns, the Commission believes that Nasdaq and traditional exchanges must have the flexibility to rethink their structures to permit appropriate responses to the rapidly changing marketplace. Congress instructed the Commission to seek to ''enhance competition and to allow economic forces, interacting with a fair regulatory field, to arrive at appropriate variation in practices and services.''[48] The Commission finds that the proposal to fully integrate the entry, execution, and processing of odd and mixed-lot orders in SuperMontage is consistent with these goals in that it is reasonably designed to promote price discovery, best execution, liquidity, and market innovation, while continuing to preserve competition among market centers. The Commission emphasizes that participation in SuperMontage as originally designed, and as subsequently amended, is voluntary.

As the commenter noted, ECNs that do not wish to be exposed to dual liability could accept the lock/cross warning message and then re-route the order to SuperMontage. While this solution may be less than optimal, the commenter indicated that it is a viable option. Further, the Commission notes that the original approval of the SuperMontage was conditioned on the NASD offering a quote and trade reporting alternative that satisfies the Order Handling Rules, Regulation ATS, and other regulatory requirements for ATSs, ECNs, and market makers prior to or at the same time as the implementation of SuperMontage.[49] Thus, prior to the implementation of the SuperMontage, market participants will be able to fulfill their obligations under the Order Handling Rules if they choose not to participate in the SuperMontage for any reason.

Notwithstanding the flexibility warranted in a market center's determination of its market structure, the Commission expects that Nasdaq will carefully monitor quote and execution quality under the proposal. In addition, the Commission expects Nasdaq to monitor the impact and surveil the entry and execution of odd-lot orders in SuperMontage. If the integration of odd-lot orders has a deleterious effect on quoting and execution in the Nasdaq market, the Commission expects that Nasdaq will submit an appropriate response, in the form of a proposed rule change, to restore and enhance quote and execution quality.

Finally, the Commission finds that with regard to trade reporting this proposal raises no new regulatory issues and that Nasdaq will continue to meet its trade reporting obligations under the Act.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[50] that the proposed rule change (SR–NASD–2002–42), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[51]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21378 Filed 8–21–02; 8:45 am]

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[44] *See* Levine Letter. *See also* CIBC Levine Letter.

[45] The Commission notes that the Customer Limit Order Display Rule exempts odd-lot orders from the display requirement. *See* Exchange Act Rule 11Ac1–4(c)(3), 17 CFR 240.11Ac1–4(c)(3).

[46] *See* Arca Letter.

[47] Exchange Act Rule 11Ac1–1, 17 CFR 240.11Ac1–1.

[48] *See* S. Rep. No. 94–75, 94th Cong., 1st Sess. 7 (1975) at p. 8 (''Senate Report'').

[49] On July 24, 2002, the Commission approved an NASD proposal to establish an alternate display facility on a pilot basis. *See* Securities Exchange Act Release No. 46249, 67 FR 49822 (July 31, 2002) (File No. SR–NASD–2002–97). However, the Order expressly notes that the Commission has not determined that the preconditions of SuperMontage have been met.

[50] 15 U.S.C. 78s(b)(2).

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46373; File No. SR–NASD–2002–101]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. To Increase Fees for the Mutual Fund Quotation Service and To Adopt a New Fee To Process a Request To Amend the Name and/or Symbol of a Fund

August 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 30, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

Amendment No. 1 to the proposal with the Commission on August 5, 2002.[3] Nasdaq filed Amendment No. 2 to the proposal with the Commission on August 15, 2002.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes amend NASD Rule 7090 to increase fees associated with the Mutual Fund Quotation Service (''MFQS'' or the ''Service'') and to adopt a new administrative fee to process a request to amend the name and/or symbol of a fund. If approved, Nasdaq proposes to implement the proposed rule change on the first day of the month immediately following approval by the Commission.

The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

Rule 7090. Mutual Fund Quotation Service

(a) Funds and Unit Investment Trusts included in the Mutual Fund Quotation Service (''MFQS'') shall be assessed an annual fee of $400 per fund or trust authorized for the News Media Lists and $275 per fund or trust authorized for the Supplemental List. Funds or trusts authorized during the course of an annual billing period shall receive a proportion of these fees but no credit or refund shall accrue to funds or trusts terminated during an annual billing period. In addition, there shall be a one-time application processing fee of [$250] *$325* for each new fund or trust authorized.

(b) If a Unit Investment Trust expires by its own terms during an annual billing period and is replaced within three months by a trust that is materially similar in investment objective, the replacing trust shall be charged a one-time application fee of $150. In addition, the replacing trust shall not be charged an annual fee if the expiring trust has already paid an annual fee for that annual billing period.

(c) Funds included in the MFQS and pricing agents designated by such funds (''Subscriber''), shall be assessed a monthly fee of [$75] *$100* for each logon identification obtained by the Subscriber. A Subscriber may use a logon identification to transmit to Nasdaq pricing and other information that the Subscriber agrees to provide to Nasdaq.

(d) Funds included in the MFQS shall be assessed a $20 administrative fee to process a request to amend the name and/or the symbol of a fund.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The MFQS was created to collect and to disseminate data pertaining to the value of open- and closed-end mutual funds, money market funds, and unit investment trusts. Currently, the MFQS disseminates the valuation data for over 17,000 funds, an increase of over 45 percent since January 2000. Funds must meet minimum eligibility criteria in order to be included in the MFQS.[5] The MFQS has two ''lists'' in which a fund may be included—the News Media List and the Supplemental List—and each list has its own eligibility requirements. If a fund qualifies for the News Media List, pricing information about the fund is eligible for inclusion in the fund tables of newspapers and is also eligible for dissemination over Nasdaq's Level 1 Service, which is distributed to market data vendors. If a fund qualifies for the Supplemental List, the pricing information about that fund generally is not included in newspaper fund tables, but is disseminated over Nasdaq's Level 1 Service. The Supplemental List, therefore, provides significant visibility for funds that do not otherwise qualify for inclusion in the News Media List.

MFQS permits funds included in the Service or a pricing agent designated by such funds (''Subscribers'') to transmit specific fund-related information directly to Nasdaq via the Internet. This information includes, but is not limited to, net asset value, offer price, closing market price, capital gains distributions, and assets. Nasdaq assigns to each Subscriber one or more logon identifications that allow the Subscriber to interface with the MFQS and transmit data securely to Nasdaq. Each logon identification is unique and allows only one user at a Subscriber to access the MFQS at a time; however, a Subscriber may obtain multiple logon identifications, to allow multiple users to access the MFQS simultaneously.

On June 3, 2002, Nasdaq introduced several enhancements to the MFQS Web site in response to enhancement requests from Subscribers, including new data messages for the pricing of unit investment trusts, new query tools to evaluate statistics regarding fund pricing updates, and improvements in the efficiency of fund update processing.

In 1998, Nasdaq established a fee of $75 per month per logon identification to cover the costs of maintaining the security of web-based access to the MFQS.[6] Since that time, Nasdaq has regularly upgraded its security software and hardware to keep pace with the evolving complexity of Internet security threats. As a result, Nasdaq proposes to increase this fee to $100 per month per logon identification to reflect the costs of these upgrades and the costs of recent website enhancements.[7]

Currently, funds wishing to list with MFQS pay a one-time application processing fee of $250, and thereafter pay an annual listing fee. The application processing fee has not been modified since it was introduced in 1996.[8] Since that time, the growth of MFQS has required the staff that process applications to shift from a desktop database using off-the-shelf software to a more sophisticated database and tracking system that requires full software lifecycle support (e.g., software

[3] *See* letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 5, 2002 (''Amendment No. 1''). In Amendment No. 1, Nasdaq made technical corrections to the proposed rule text.

[4] *See* letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 14, 2002 (''Amendment No. 2''). In Amendment No. 2, Nasdaq amended the purpose section of the proposal to better reflect the basis for each proposed fee increase.

[5] *See* NASD Rule 6800.

[6] *See* Securities Exchange Act Release No. 40694 (November 19, 1998); 63 FR 65832 (November 30, 1998).

[7] Nasdaq understands that while this fee was initially designed to only cover the cost of maintaining the Internet security of the system, Nasdaq now believes that the fee increase is necessary to cover the additional costs of developing and providing web-based access to MFQS. Telephone conversation between John M. Yetter, Assistant General Counsel, Nasdaq, and Christopher Solgan, Law Clerk, Division, Commission, on August 6, 2002.

[8] *See* Securities Exchange Act Release No. 37014 (March 22, 1996); 61 FR 14182 (March 29, 1996).

engineers, quality control testing, and technical staff support in production). To reflect the costs associated with this upgrade, as well as general increases in the personnel costs associated with MFQS since 1996, Nasdaq proposes to increase the fee to $325.

Finally, Nasdaq introduces a nominal $20 fee for processing requests to change the name and/or symbol of a fund that is currently listed on MFQS. In 2001, MFQS operations personnel performed over 2,000 name and symbol changes for listed funds. Nasdaq believes that it should be compensated for the personnel and system costs associated with making these changes. The fee would be charged for each request to change a name and/or symbol. Thus, if a fund requested a simultaneous change to its name and its symbol, the fee would still be $20.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[9] in general, and with section 15A(b)(5) of the Act,[10] in particular, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes that the fee changes are necessary to ensure that the fees for MFQS continue to cover the costs of its operation. The fees will be imposed directly on funds that benefit from the operation of the System.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR–NASD–2002–101 and should be submitted by September 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21428 Filed 8–21–02; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46372; File No. SR–NYSE–2002–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Renewal of Supplemental Procedures Relating to Arbitration Rules

August 16, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on August 2, 2002 the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities Exchange Commission (''SEC'' or ''Commission'') the proposed Renewal of Supplemental Procedures to the Arbitration Rules as described in Items, I, II and III below, which items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the Renewal of Supplemental Procedures from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed Renewal of Supplemental Procedures is to allow the parties to agree, on a pilot basis for two years from the date of filing, to select arbitrators under a procedure that is an alternative to NYSE Rules 601 and 607. The proposed Renewal of the Supplemental Procedures is fully described in Exhibit A of the Form 19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the placed specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed Renewal of Supplemental Procedures is to allow the parties to agree, on a pilot basis for two years from the date of filing, to select arbitrators under a procedure that is an alternative to NYSE Rules 601 and 607. The proposed Renewal of Supplemental Procedures is based, in part, on rules approved by the Securities Industry Conference on Arbitration (''SICA'') that established a list selection procedure for appointment of arbitrators. The Supplemental Procedures are voluntary and will not be used unless all parties agree to them.

[1] 15 U.S.C. 78*s*(b)(1).

[2] 17 CFR 240.19b–4.

The Supplemental Procedures invite the parties to select their own arbitrators or agree on a procedure to select arbitrators. The Supplemental Procedures also suggest two ways the parties can select arbitrators instead of having the Exchange appoint them.

The Exchange started an informal pilot program in July 1998 in an attempt to gauge the parties' interest in alternative ways to select arbitrators. The Exchange's Board approved a two-year pilot program for Supplemental Procedures for selecting arbitrators in April 6, 2000. The Exchange filed the Supplemental Procedure with the SEC and they became effective on August 1, 2000.[3]

NYSE Appoints Arbitrators Under Rules 601 and 607

Under NYSE Rules 601 and 607, the Director of Arbitration appoints arbitrators to serve on each case. The Director generally delegates this task to a staff attorney. Each party has one peremptory challenge that allows the party to remove an arbitrator without specifying a reason. The parties have unlimited challenges for cause.

In 1998, the National Association of Securities Dealers, Inc. (''NASD'') amended its rules to require that all arbitrators be appointed using a rotational list selection system. Their rule differs somewhat from the SICA Uniform Code and the Exchange's proposed Supplemental Procedures.

Voluntary Supplemental Procedures for Selecting Arbitrators

(a) *Party Agreement on Arbitrator Selection*

Under NYSE Rules, described above, the Director of Arbitration appoints the arbitrators, subject to the parties' challenges. The parties, however, may agree on an alternative way to select arbitrators. If all parties agree, they may select the arbitrators themselves or decide how they will be selected. The Exchange will accommodate any reasonable alternative way to select arbitrators, provided the parties agree. The Exchange also offers two alternative ways to appoint arbitrators. The following is a brief description of each method.

(b) *Random List Selection*

Under Random List Selection, the Exchange provides the parties with a list of names of arbitrators randomly generated by computer. Except as described below, the list will have fifteen names. Ten of the arbitrators will be public arbitrators as defined by NYSE Rule 607(a)(3), and five will be securities industry arbitrators as defined by NYSE Rule 607(a)(2), unless the public customer or non-member request a panel consisting of at least a majority from the securities industry. If, in the determination of the Exchange, the limited size of the arbitrator pool in a particular city makes a list of fifteen impractical, the lists may be limited to nine arbitrators, six public arbitrators and three securities industry arbitrators. Before the Exchange sends the lists of the parties, it will review the arbitrators' profiles for obvious conflicts or relationships with the parties or their counsel. The Exchange will replace those with conflicts by having the computer randomly select the name of a replacement arbitrator. The parties are also provided with the arbitrators' biographical and disclosure information as specified in NYSE Rules 608 (Notice of Selection of Arbitrators).

Within ten business days of receiving the lists, the parties may strike any or all of the names on the list. The parties are asked to number the remaining names in order of their preference (with ''1'' being the highest preference) and return the lists to the Exchange. If any arbitrator is removed from the list for cause before the expiration of the time within which to return the lists, the Exchange will provide a replacement name. The Exchange eliminates the names stricken and determines the ranking of the remaining names by adding the parties' rankings. The NYSE determines mutual preferences by adding the numbers assigned by each party to each arbitrator and selecting arbitrators with the lowest numbers first. The Exchange invites arbitrators to serve in order of the parties' combined preferences. In cases of a tie in the rankings, arbitrators will be invited to serve in alphabetical order.

If the Exchange cannot assemble a panel of arbitrators from the parties' lists, the Exchange will provide the parties with a second randomly generated list of names. The second list will have three names for each open seat on the panel. On the second list, each party has one non-renewable peremptory for each vacancy on the panel. Each party is to number the remaining names in order of its preference. If any arbitrator is removed from the list for cause before the expiration of the time within which to return the lists, the Exchange will provide a replacement name. If there remains more than one name per vacancy after the parties have exercised their strike, the Exchange will invite arbitrators to serve in order of the parties' combined preferences. In the case of a tie, the Exchange will invite arbitrators to serve in alphabetical order.

The Exchange will notify the arbitrators of their selection and advise the parties of any disclosures under Rule 610.

(c) *Enhanced List Selection*

The second alternative is a hybrid of Exchange Rules and Random List Selection. Under Enhanced List Selection, the Exchange provides the parties with the names and profiles of nine arbitrators, six public arbitrators and three securities industry arbitrators, unless the public customer or non-member requests a panel consisting of at least a majority from the securities industry. The staff attorney selects these arbitrators based upon their qualifications and experience. The parties may exercise three peremptory challenges and number, in order of their preference (with ''1'' being the highest preference) the remaining names. If the Exchange removes any arbitrator from the list for cause before the end of the time to return the lists, the Exchange will provide a replacement name. The staff attorney then invites the arbitrators to serve based upon the parties' combined rankings. In case of a tie in the rankings, the Exchange will invite arbitrators to serve in alphabetical order.

If the Exchange cannot appoint a complete panel from the list, the staff attorney will appoint an arbitrator or arbitrators to complete the panel. Each party has one non-renewable peremptory challenge for each arbitrator the Exchange appoints. A party must use a peremptory challenge within ten business days of receiving notice of the appointment. The parties have unlimited challenges for cause.

Voluntary Pilot Program

The Exchange does not believe a rule requiring one of the alternative selection methods is appropriate at this time. Since July of 1998, the Exchange has offered parties the opportunity to select arbitrators on a voluntary basis similar to those detailed above. The Exchange has attempted to gauge the parties' interest in using alternatives to appoint arbitrators. After approximately 24 months of offering these alternatives, less than 15 percent of the parties in arbitration have chosen the alternatives. The Exchange has asked the parties to comment on the pilot, but has had limited responses. Some who responded preferred greater party control over the selection of arbitrators afforded by list selection. Others expressed a preference for the value added by the participation of Exchange staff attorneys in selecting arbitrators. To date, the results of the pilot program have been inconclusive.

[3] Exchange Act Release No. 43214 (August 28, 2002) 65 FR 53247 (September 1, 2000).

Accordingly, it is appropriate to renew the pilot program for two more years to allow the Exchange to collect additional information about the desirability of the Supplemental Procedures. The modest rate of acceptance leads the Exchange to recommend that the alternatives be continued on a voluntary basis.

1. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)[4] of the Act in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate,[5] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

The Commission also notes that under Rule 19b–4(f)(6)(iii), the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate it consistent with the protection of investors and the public interest. The Exchange requests a waiver of this 30-day period for the following reasons. First, the Supplemental Procedures are voluntary. Second, the Exchange notes that it based the Supplemental Procedures on the Uniform Code of Arbitration developed by SICA. Finally, the Exchange notes that the Commission approved a similar rule change by the National Association of Securities Dealers, Inc. (''NASD'') that provides for a list selection of arbitrators.[8] For the reasons discussed above, the Commission designates that the waiver of the 30-day period is consistent with the protection of investors and the public interest.[9]

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–30 and should be submitted by September 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21430 Filed 8–21–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b)(5).

[5] The Exchange provided the Commission with the five-business day notice required by Rule 19b–4(f)(6) of the Act on August 2, 2002.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] *See* Exchange Act Release No. 40555 (October 14, 1998) 63 FR 56670 (October 22, 1998).

[9] For the purposes only of accelerating the operating date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3427]

State of Alaska; Amendment #1

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to August 26, 2002.

All other information remains the same, *i.e.,* the deadline for filing applications for economic injury is March 26, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 15, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–21448 Filed 8–21–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3426]

State of Arizona; Amendment #3

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to August 26, 2002.

All other information remains the same, *i.e.,* the deadline for filing applications for economic injury is March 25, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 15, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–21447 Filed 8–21–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3425]

State of Iowa; Amendment #3

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to August 19, 2002.

All other information remains the same, *i.e.,* the deadline for filing applications for economic injury is March 19, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 15, 2002.

Herbert L. Mitchell,

Associate Administrator For Disaster Assistance.

[FR Doc. 02–21446 Filed 8–21–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4081]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The Department of State announces the meeting of the U.S. Advisory Commission on Public Diplomacy on Wednesday, September 18 in Room 1408 of the U.S. Department of State at 2201 C Street, NW., Washington, DC. The meeting will take place from 10 a.m. to 12 p.m.

The Commission will release its plan to reform the structure and build the resources of America's public diplomacy—how the nation informs and influences foreign audiences. The recommendations include funding levels, leadership models and suggestions on private initiatives that promote dialogue and have a cumulative long-term effect on attitudes toward the United States.

The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current commission members include Harold Pachios of Maine, who is the chairman; Charles Dolan of Virginia, who is the vice chairman; Penne Percy Korth of Washington, D.C.; Lewis Manilow of Illinois; and Maria Elena Torano of Florida.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees.

To attend the meeting, please contact Matt Lauer at (202) 619–4457 and provide date of birth and social security number. For more information visit *www.state.gov/r/adcompd.*

Dated: August 15, 2002.

Matthew Lauer,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 02–21459 Filed 8–21–02; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Nos. OST–95–179 and 95–623]

Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases

AGENCY: Office of the Secretary, DOT

ACTION: Notice of Request for Extension of a Currently Approved Information Collection

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces and requests comments on the Department of Transportation's (Department or DOT) intention request extension of a previously approved collection that reflects DOT's current consumer notification rules and policies to ensure that consumers have pertinent information about airline code-sharing arrangements and long-term wet leases in domestic and international air transportation.

DATES: Comments on this notice should be received September 23, 2002.

ADDRESSES: Attention Competition and Policy Analysis Division (X–55), Office of Aviation Analysis, U.S. Department of Transportation, Room PL–401, Docket Nos. OST–95–179 and OST–95–623, 400 Seventh Street, SW., Washington, DC 20590. Three copies are requested but not required.

FOR FURTHER INFORMATION CONTACT: Jack Schmidt, Office of Aviation and International Economics, Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590, (202) 366–5420.

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Code-sharing Arrangements and Long-term Wet Leases.

OMB Control Number: 2105–0537.

Type of request: Extension of a previously approved collection.

Affected Public: All U.S. air carriers, foreign air carriers, computer reservations systems (CRSs), travel agents doing business in the United States, and the traveling public.

Comments are invited on: (a) Whether this collection of information (third party notification) is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden 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 the respondents, including through the use of automated techniques or other forms of information technology.

Issued in Washington, DC, on August 19, 2002.

Michael Robinson,

Program Analyst.

[FR Doc. 02–21466 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–95–177]

Disclosure of Change-of-Gauge Services

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Request for Extension of a Currently Approved Information Collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the Department of Transportation's (DOT) intention to request the extension of a previously approved collection.

DATES: Comments on this notice must be received September 23, 2002.

ADDRESSES: Attention Competition and Policy Analysis Division (X–55), Office of Aviation Analysis, U.S. Department of Transportation, Room PL–401, Docket No. OST–95–177 (formerly 47546), 400 Seventh Street, SW., Washington, DC 20590. Three copies are requested, but not required.

FOR FURTHER INFORMATION CONTACT: Jack Schmidt, Competition and Policy Analysis Division (X–55), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590, (202) 366–5903.

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Change-of-Gauge Services.

OMB Control Number: 2105–0538.

Type of Request: Extension of a previously approved collection.

Affected Public: All U.S. air carriers, foreign air carriers, computer reservations systems, travel agents doing business in the United States and the traveling public.

Comments are invited on: (a) Whether this 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 burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on the respondents, including through the use of automated techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on August 19, 2002.

Michael Robinson,

Program Analyst.

[FR Doc. 02–21467 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Review Under 49 U.S.C. 41720 of United/US Airways Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Extension of waiting period.

SUMMARY: United Air Lines and US Airways have submitted code-sharing and frequent flyer program reciprocity agreements to the Department for review under 49 U.S.C. 41720. That statute requires such agreements between major U.S. passenger airlines to be submitted to the Department at least thirty days before the agreements' proposed effective date and authorizes the Department to extend the waiting period for any such agreement. The Department has determined to extend the waiting period for the United/US Airways agreements for an additional thirty days.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: As provided by 49 U.S.C. 41720, on July 25 United and US Airways submitted code-sharing and frequent flyer program reciprocity agreements to the Department more than thirty days before the airlines planned to implement them. The statute authorizes us to extend the waiting period by 150 days with respect to a code-sharing agreement and by 60 days for the other types of agreements covered by the advance-filing requirement.

We have been reviewing the agreements, the comments submitted by outside parties, and other information in our possession, and we have been consulting with the Justice Department. We have also given interested parties an opportunity to submit comments on the agreements. 67 FR 50745 (August 5, 2002). As has been the case with respect to all agreements submitted under 49 U.S.C. 41720 since its enactment, our review of the United/US Airways agreements has been informal. *See* 67 FR 50745.

The purpose of our review is to see whether we should begin a formal investigation under section 41712 of the arrangements between United and US Airways, or take other action as a result of the agreements. United and US Airways will not need to obtain our approval before implementing their agreements after the end of the statutory waiting period (either the original waiting period or any extended period established by us). To block two airlines from implementing an agreement, we would normally need to issue an order under 49 U.S.C. 41712 (formerly section 411 of the Federal Aviation Act) in a formal enforcement proceeding that determines that the agreement's implementation would be an unfair or deceptive practice or unfair method of competition that would violate that section. Our informal review of the agreements accordingly focuses on whether they would significantly reduce competition.

We have concluded that we need additional time to determine whether the agreements or specific provisions in the agreements raise questions under 49 U.S.C. 41712 that may require us to request modifications of the agreements or to institute an enforcement proceeding. The agreements present important issues that require additional investigation by us. We have therefore determined to extend the waiting period by another thirty days, from August 24 to September 23. We understand that the two airlines wish to be able to implement the agreements promptly, and we therefore intend to conclude our review as soon as reasonably possible.

We recognize that the Air Carrier Association of America (''ACAA'') filed a motion to suspend proceedings and open a docket. ACAA argues that all information relating to the application should be made public, including all discussions between US Airways and the Air Transportation Stabilization Board (''ATSB''), the board that is considering a loan guarantee application filed by United and that has conditionally approved a loan guarantee application filed by US Airways. Docket OST–2002–12986. We have given ACAA and all other interested persons the ability to comment on the United/US Airways agreements. If ACAA has evidence and analysis indicating that the United/US Airways agreements in whole or in part may involve unfair methods of competition, it has had the opportunity to submit that material for our consideration.

In addition, the ACAA motion incorrectly assumes that the ATSB based its conditional approval of the US Airways application on the airline's ability to implement its agreements with United. The letter released by the ATSB did not make the implementation of those agreements a necessary condition to approval of the loan guarantee application. The ATSB has been expressly informed and is fully aware that this Department and the Justice Department have independent responsibilities for preventing unlawful anti-competitive conduct in the airline industry and that this Department has other independent regulatory responsibilities over the airline industry and the airports used by commercial airlines. This Department intends to carry out all of its regulatory responsibilities regarding the agreements before it completely independent of any matters that may or may not be pending before the ATSB.

Issued in Washington, DC, on August 19, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–21555 Filed 8–20–02; 2:43 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2002–12432]

Application for Exemptions From Driver Physical Qualification Standards From Jerry Parker

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of application for exemptions; request for comments.

SUMMARY: The FMCSA requests public comment on a request for an exemption application from the Federal standards for vision and for the loss or impairment

of limbs by Mr. Jerry Parker. Mr. Parker does not meet the vision requirements because of severe vision loss in his right eye. He does not meet the physical qualification requirements for the loss or impairment of limbs because he is missing his left arm and is unable to demonstrate power grasp prehension and precision prehension with each upper limb separately. In order for Mr. Parker to operate a commercial motor vehicle (CMV) in interstate commerce, he must be granted an exemption from both requirements. Mr. Parker believes his driving record indicates that a level of safety can be achieved that is equivalent to, or greater than, the level of safety that would be obtained by complying with the standards for vision and for loss or impairment of limbs set forth in the Federal Motor Carrier Safety Regulations.

DATES: We must receive your comments on or before September 23, 2002.

ADDRESSES: You can 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. You can also submit comments as well as see the submission of other commenters at *http://dmses.dot.gov.* Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or print a copy of the acknowledgement page that appears after you submit comments electronically.

FOR FURTHER INFORMATION CONTACT: For information about the exemptions in this notice, you may contact Ms. Kaye Kirby, Office of Bus and Truck Standards and Operations, (202) 366–3109; Federal Motor Carrier Safety Administration, Department of Transportation, 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:

Background

Sections 31315 and 31136 of title 49 of the United States Code (U.S.C.) provide the FMCSA with authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). An exemption provides time-limited regulatory relief from one or more FMCSRs given to a person or class of persons subject to the regulations, or who intend to engage in an activity that would make them subject to the regulations. An exemption provides the person or class of persons with relief from the regulations for up to two years, and may be renewed. Sections 31315 and 31136(e) of 49 U.S.C. require the agency to consider whether the terms and conditions for the exemption would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulations when evaluating applications for exemptions.

In addition, the agency must publish a notice in the **Federal Register** for each exemption requested, explaining the request that has been filed; providing the public with an opportunity to inspect the safety analysis and any other relevant information known to the agency; and requesting public comment on the exemption. Before granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period and all terms and conditions of the exemption. The terms and conditions established by FMCSA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, FMCSA published an interim final rule implementing section 4007 of the Transportation Equity Act for the 21st Century (TEA–21)(codified at 49 U.S.C. 31315) (See 63 FR 67600). The regulations at 49 CFR part 381 establish the procedures to be followed to request waivers and to apply for exemptions from the FMCSRs, and the provisions used to process them.

Mr. Parker's Request for Regulatory Relief

Mr. Parker applied for a vision waiver from the FHWA in 1996, under the agency's authority to grant waivers to regulations promulgated under the Motor Carrier Safety Act of 1984. That authority has since been superseded by 49 U.S.C 31315. The criteria for obtaining a vision waiver was established under the agency's former Vision Waiver Program and included a provision that applicants for vision waivers meet all other physical qualification requirements under 49 CFR 391.41. When the agency discovered that Mr. Parker's left arm had been amputated at the shoulder, his application for a vision waiver was denied. The agency indicated that it lacked sufficient evidence to determine if someone with both a vision impairment and limb impairment could safely operate a CMV. Subsequently, the agency has learned that Mr. Parker may have some degree of impairment in his right arm

Mr. Parker filed a Petition for Review with the United States Court of Appeals for the Sixth Circuit arguing that denial violated the Rehabilitation Act because the FMCSA did not perform an individualized inquiry into the merits of Mr. Parker's petition. On March 17, 2000, the Court ruled that the agency's administrative decision was arbitrary and capricious, and a violation of the Rehabilitation Act (*Jerry W. Parker* v. *United States Department of Transportation,* 207 F. 3d 359 (6th Cir. 2000)). The Court was concerned that the decision not to assess Mr. Parker's actual driving capabilities was not consistent with the agency's prior determination under the vision waiver program that the best predictor of future performance by a driver was the driver's past record of accidents and traffic violations. The court concluded that agency failure to assess Mr. Parker's actual driving capability created a per se rule against granting vision waivers to individuals with multiple disabilities. The Sixth Circuit remanded the case to FMCSA to create a functional capacity test that relies upon our finding that an individual's driving record is indicative of future performance.

In response to the Court's ruling, FMCSA is currently considering requests for exceptions to the physical qualifications standards from drivers with multiple disabilities, to be applications for exemptions. Each disability that would preclude the driver from complying with the physical qualifications standards should be considered separately with regard to the agency's process for determining whether to grant or deny the petition upon review of public comments. The agency has made a preliminary decision to use the existing procedures under 49 CFR part 381.

Consistent with the agency's preliminary decision concerning drivers with multiple disabilities, the agency is considering Mr. Parker's request as: (1) An application for an exemption from the vision standard under section 391.41(b)(10); and (2) an application for an exemption from the standard for the loss of limbs at section 391.41(b)(1).

Section 391.41(b)(10) requires a person to have distant vision acuity of a least 20/40 (Snellen) in each eye with

or without corrective lenses; and distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses; and field of vision of at least 70 degrees in the horizontal meridian in each eye; and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber. Section 391.41(b)(1) requires that a person have no loss of foot, leg, hand, or arm, or alternatively, be granted a skill performance evaluation (SPE) certificate [previously called a ''waiver''] pursuant to section 391.49. The alternative physical qualification standards for the loss or impairment of limbs, at 49 CFR 391.49(d)(3)(i)(B), include a requirement that applicants for SPE certificates include with their application a medical evaluation summary that, ''* * * the applicant is capable of demonstrating precision prehension (e.g. manipulating knobs and switches) and power grasp prehension (e.g. holding and maneuvering the steering wheel) with each upper limb separately.''

Mr. Parker does not meet the vision requirements because of a congenital eye condition known as Coats disease in his right eye. His ability to see with his right eye is below that which could be measured on the standard Snellen chart. However, he has corrected vision of 20/20 in his left eye. Mr. Parker does not meet the physical qualification requirements for the loss of limbs and he is unable to demonstrate precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately. Under current regulations at 49 CFR 391.41/391.49, Mr. Parker would need to use a prosthetic device in order to demonstrate precision and power grasp prehension. He does not use a prosthetic device to assist in operating CMVs. Mr. Parker's left arm was amputated above the elbow. His right arm has severe scarring and he has had multiple surgeries on this arm as a result of the injuries sustained in the accident that necessitated the amputation of the left arm.

Mr. Parker stated that he has driven safely over 1.2 million miles in a CMV since 1985. He has no accidents and no traffic violations on his driving record.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment from all interested parties on Mr. Parker's application for an exemption from the Federal standards for vision and for the loss of limbs. Interested persons should consider each exemption separately, to the greatest extent practicable. FMCSA also requests comments on our plan to assess individual physical impairments separately (only vision and limb). We have not yet made a final decision on potential diabetic exemptions and today's notice pronounces no proposal on how to handle those situations. The agency may grant or deny either or both requests based on the comments received, and any other relevant information that is available to the agency.

Issued on: August 19, 2002.

Pamela M. Pelcovits,

Director, Office of Policy Plans and Regulation.

[FR Doc. 02–21476 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–200213161]

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 SPIRIT.

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 September 23, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13161. 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: SPIRIT. Owner: Pamela L. Benson (in process of vessel purchase, sale final 9/10/2002).

(2) Size, capacity and tonnage of vessel. According to the applicant: ''Gross Tonnage: 14, Net Tonnage: 13, Length: 41 feet, Hull Depth: 5.7 feet, Hull Breadth: 12.7 feet.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''Sail Training, targeted but not exclusive to, youth and women. Geographic Area: Puget Sound, San Juan Islands.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1986. Place of construction: Richmond, BC, Canada.

(5) A statement on the impact this waiver will have on other commercial

passenger vessel operators. According to the applicant: ''There are no sailing schools or sail training vessels to my knowledge, in the Port Orchard/Bremerton/Silverdale area, which is located on the west side of Puget Sound. The nearest sailing school is in Gig Harbor, 20 miles away that only utilizes sailing dinghies. In addition, to my knowledge, there are no sail charters available on the entire west side of Puget Sound.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: '' I do not see any impact that this would have on U.S. Shipyards, as the U.S. Shipyards do not currently produce a low-profile pilothouse sailing vessel of this configuration.''

Dated: August 16, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–21445 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting: Change of Date

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of the meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC) originally scheduled to be held at 11 AM on Wednesday, August 28, 2002, will now be held at 11 AM on Wednesday, September 11, 2002, by conference call in the Administrator's Office, room 5424, 400 7th Street, SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than September 6, 2002, Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on August 19, 2002.

Marc C. Owen,

Chief Counsel.

[FR Doc. 02–21474 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Fiduciary Activities of National Banks—12 CFR part 9.''

DATES: You should submit written comments by October 21, 2002.

ADDRESSES: You should direct comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0140, 250 E Street, SW., Washington, DC 20219. Due to recent, temporary disruptions in the OCC's mail service, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW, Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

A copy of the comments should also be sent by mail to the OMB Desk Officer for the OCC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or by e-mail to *jlackeyj@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: You can request additional information from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Fiduciary Activities of National Banks—12 CFR 9.

OMB Number: 1557–0140.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection. The OCC requests only that OMB extend its approval of the information collection.

Under 12 U.S.C. 92a, the OCC regulates the fiduciary activities of national banks, including the administration of collective investment funds. The requirements in 12 CFR Part 9 enable the OCC to perform its responsibilities relating to the fiduciary activities of national banks and collective investment funds. The collections of information in Part 9 are found in §§ 9.8(b), 9.9(a) and (b), 9.17(a), 9.18(b)(1), 9.18(b)(6)(ii), 9.18(b)(6)(iv), and 9.18(c)(5) as follows:

Section 9.8(b) requires a national bank to maintain fiduciary records;

Section 9.9(a) and (b) require a national bank to note the results of a fiduciary audit in the minutes of the board of directors;

Section 9.17(a) requires a national bank that wants to surrender its fiduciary powers to file with the OCC a certified copy of the resolution of its board of directors;

Section 9.18(b)(1) requires a national bank to establish and maintain each collective investment fund in accordance with a written plan;

Section 9.18(b)(1) also requires a national bank to make the plan available for public inspection and to provide a copy of the plan to any person who requests it;

Section 9.18(b)(6)(ii) requires a national bank to prepare a financial report of the fund;

Section 9.18(b)(6)(iv) requires a national bank to disclose the financial report to investors and other interested persons; and

Section 9.18(c)(5) requires a national bank to request OCC approval of special exemption funds.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Responses: 1,000.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 15,010 hours.

Comments submitted in response to this notice will be summarized and 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 has 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 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 operation, maintenance, and purchase of services to provide information.

Dated: August 15, 2002.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 02–21424 Filed 8–21–02; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Intent To Grant Exclusive License

AGENCY: Department of Veterans Affairs, Research and Development Office.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs, Research and Development Office, intends to grant to 21st Century Medicine, Inc., 10844 Edison Court, Rancho Cucamonga, California, 91730, U.S.A., an exclusive license to practice U.S. Patent Application Number 09/546,860, filed Apr. 10, 2000, entitled Compositions and Methods for Tissue Preservation; and International Patent Application Number PCT/US01/11834 (WO 01/76364 A2), filed Apr. 10, 2001, entitled Composition and Methods for Tissue Preservation.

DATES: Comments must be received within fifteen (15) days from the date of this published Notice.

ADDRESSES: Send comments to: Mindy Aisen, MD, Director of Technology Transfer, Department of Veterans Affairs; Attn: 122; 810 Vermont Avenue NW., Washington, DC 20420. Telephone: (202) 408–3670; Facsimile: (202) 275–7228; e-mail: *mindy.aisen@mail.va.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the published patent applications may be obtained from the U.S. Patent and Trademark Office at *www.uspto.gov*.

SUPPLEMENTARY INFORMATION: It is in the public interest to so license these inventions as 21st Century Medicine, Inc., submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published Notice, the Department of Veterans Affairs Research and Development Office receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Dated: August 14, 2002.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 02–21367 Filed 8–21–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled ''Current and Former Accredited Representative, Claims Agent, Representative and Claims Agent Applicant and Rejected Applicant and Attorney Records—VA'' (01VA022) as set forth in the **Federal Register**, 40 FR 38095 (8/26/75), and amended in 47 FR 1460 (1/13/82), 54 FR 30969 (7/25/89), and 59 FR 47377 (9/15/94). VA is amending the system notice by revising the paragraphs on System Location, Categories of Individuals Covered by the System, Categories of Records in the System, Retention and Disposal, and Record Access Procedures, and by deleting current routine uses 10 and 11 and adding two new routine uses 10 and 11.

DATES: Comments on the proposed amendments to this system of records must be received no later than September 23, 2002. If no public comments are received by this date, the amendments will become effective on September 23, 2002.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed new system of records to the Office of Regulatory Law (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or email comments to *OGCRegulations@mail.va.gov*. All relevant material received before September 23, 2002, will be considered. Comments will be available for public inspection at the above address in the Office of Regulatory Law, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Martin Sendek, Staff Attorney, Professional Staff Group II, Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6330.

SUPPLEMENTARY INFORMATION: VA is changing the System Location paragraph by deleting the phrase ''District Counsel Offices'' and replacing it with the phrase ''Regional Counsel Offices'' because the Office of General Counsel (OGC) reorganized its field offices, and in the course of that reorganization, renamed the remaining offices as ''Regional Counsel Offices''.

Changes to the Categories of Individuals Covered by the System and Categories of Records in the System reflect the addition of certain information on attorneys to the system of records, clarify the system description, and update the system description for consistency with current form designations.

Paragraph (2) under Categories of Individuals Covered by the System is rewritten to more clearly state the individuals covered, and to delete the redundant statement that claims agents are not attorneys. Under VA regulations, claims agents, by definition, are not attorneys. OGC is deleting the language currently in paragraph (4) because those records are now maintained by the Veterans Benefits Administration. The new paragraph (4) reflects records that OGC maintains on attorneys, and additional records that it will maintain under proposed regulations, once published in final form. The proposed rule was published at 63 FR 59495 (1998).

VA is amending three paragraphs under Categories of Records in the

System. Paragraph (6) is amended to reflect that VA has new form numbers for the applications of service organization representatives and claims agents to represent veterans before VA. Also, claims agents are moved from paragraph (7) to paragraph (6). The language of paragraph (7) is not amended; however, it now will only cover individuals who apply to represent individuals before VA, generally on a one-time basis, who are neither service organization representatives nor claims agents. An example would be an individual who seeks to represent his brother on his brother's claim. Finally, paragraph (9) is amended by replacing the word ''termination'' with the word ''cancellation'', which is the term that has been used in the applicable VA regulation. Paragraph (9) will also include records on probation or reprimand of individuals for conduct associated with their representational activities when the regulation published at 63 FR 59495 (1998) is published as a final rule.

The Records Retention and Disposal paragraph is changed to reflect current OGC policies in these subject areas.

Routine Uses. OGC no longer needs to make the disclosures authorized under current routine uses 10 and 11, and, accordingly, VA is rescinding them. OGC, however, does need to disclose information in two situations for which there currently are no routine uses. Consequently, OGC is inserting those two new routine uses as new routine uses 10 and 11 in place of the routine uses rescinded. New routine use 10 permits VA to release information pertaining to unlawful, unprofessional, or unethical actions by an individual in this record system to employers, and licensing organizations, such as State bar associations, when VA determines that the information relates to activities for which the individual is employed or to activities subject to the licensing organization; *e.g.*, possible ethical violations by attorneys. For example, if VA cancels the accreditation of an individual veterans service organization employee to represent veterans, VA must be able to tell the service organization that its employee may no longer represent veterans on behalf of the service organization before VA. The second routine use (new routine use 11) would allow VA to share the same information with other Federal and State agencies, and Federal courts before whom these individuals may be authorized to appear.

A ''Report of Altered System of Records'' and an advance copy of the revised system notice have been sent to the chairmen and ranking members of the Committee on Governmental Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, as required by 5 U.S.C. 552a(o) (Privacy Act) and guidelines issued by the Office of Management and Budget.

Approved: August 9, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

01VA022

SYSTEM NAME:

Current and Former Accredited Representative, Claims Agent, Representative and Claims Agent Applicant and Rejected Applicant and Attorney Records—VA

SYSTEM LOCATION:

[The phrase ''District Counsel Offices'' is replaced by the phrase ''Regional Counsel Offices''.]

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

* * * * *

(2) Claims agents who have applied for accreditation, are currently accredited, or have previously been accredited by VA to represent claimants for benefits;

* * * * *

(4) Attorneys who have been the subject of correspondence, investigations, or proceedings relating to their fitness to represent claimants for benefits before VA.

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * * *

(6) VA Forms 2–21 and 21, (Application for Accreditation as Service Organization Representative) 21a, (Application for Accreditation as a Claims Agent);

* * * * *

(9) Documents, decisions, correspondence, and other information relating to or including the granting, denial, suspension, or cancellation of accreditation of representatives, claims agents, or attorneys, and information concerning the placement of representatives, claims agents, or attorneys on probation by VA or VA's issuance of a reprimand to such an individual pertaining to conduct relating to representation of claimants for benefits before VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

10. The Office of General Counsel may disclose the name and address of any prospective, present, or former accredited representative, claims agent, or attorney, and any information concerning such individual that relates to unlawful, unprofessional, or unethical actions by that individual or to VA's denial, cancellation, suspension or termination of an individual's VA accreditation, or to both, where applicable, to employing entities and State and Federal licensing organizations when such information may be relevant to the initial or continued employment or licensing of a prospective, present, or former accredited representative, claims agent, or attorney by an employing entity or licensing organization. VA will not disclose the names and home addresses of veterans and their dependents to licensing organizations pursuant to this routine use.

11. The Office of General Counsel may disclose the name and address of any prospective, present, or former accredited representative, claims agent, or attorney, and any information concerning such individual that relates to unlawful, unprofessional, or unethical actions by that individual or to VA's denial, cancellation, suspension or termination of an individual's VA accreditation, or to both, where applicable, to other Federal and State agencies and to Federal courts when such information may be relevant to the individual's provision of representational services before such agency or court. VA will not disclose the names and home addresses of veterans and their dependents pursuant to this routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

* * * * *

RETENTION AND DISPOSAL:

VA maintains and disposes of records in accordance with records disposition authority approved by the Archivist of the United States.

* * * * *

RECORD ACCESS PROCEDURES

Individuals seeking copies of records under this system that pertain to themselves, or seeking to amend such records, should make those requests under the Privacy Act. Individuals seeking copies of records pertaining to others should request them under the Freedom of Information Act. All such requests should be in writing, over the original, handwritten signature of the requester, and should be mailed to: FOIA/PA Officer (026G), Office of General Counsel, 810 Vermont Ave., NW., Washington, DC 20420.

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[FR Doc. 02–21368 Filed 8–21–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 67, No. 162

Thursday, August 22, 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.

DEPARMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 438

[CMS–2104–F]

RIN 0938–AK96

Medicaid Program; Medicaid Managed Care: New Provisions

Correction

In rule document 02–14747 beginning on page 40988 in the issue of Friday, June 14, 2002, make the following correction:

§ 438.214 [Corrected]

On page 41108, in the second column, in §438.214, in the second paragraph, in the first line ''(a)'' should read ''(b)''.

[FR Doc. C2–14747 Filed 8–21–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
August 22, 2002

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 400, 405, and 426

Medicare Program: Review of National Coverage Determinations and Local Coverage Determinations; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 400, 405, and 426

[CMS–3063–P]

RIN 0938–AK60

Medicare Program: Review of National Coverage Determinations and Local Coverage Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would create a new process to allow certain Medicare beneficiaries to challenge national coverage determinations (NCDs) and local coverage determinations (LCDs). It would implement portions of section 522 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000. The right to challenge NCDs and LCDs would be distinct from the existing appeal rights that Medicare beneficiaries have for the adjudication of Medicare claims.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 21, 2002.

ADDRESSES: In commenting, please refer to file code CMS–3063–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3063–P, P.O. Box 8017, Baltimore, MD 21244–8017.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Vadim Lubarsky, 410–786–0840 for National Coverage Determinations. Melanie Combs, 410–786–7683 for Local Coverage Determinations.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Timely comments will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, contact Van Ross at (410) 786–4473.

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This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Web site address is *http://www.access.gpo.gov/nara/index.html.*

Note: The former name of the Centers for Medicare & Medicaid Services (CMS) was the Health Care Financing Administration (HCFA). The terms CMS and HCFA can be used interchangeably.

I. Background

A. Overview of Existing Statutes, Regulations, and Policies

Medicare is the nation's largest health insurance program covering approximately 40 million Americans. Beneficiaries consist primarily of individuals 65 years of age or older, some disabled people under 65 years of age, and people with end-stage renal disease (permanent kidney failure treated with dialysis or a transplant).

The original Medicare program consists of two parts. Part A, known as the hospital insurance program, covers certain care provided to inpatients in hospitals, critical access hospitals, skilled nursing facilities, as well as hospice care and some home health care. Part B, the supplementary medical insurance program, covers certain physicians' services, outpatient hospital care, and other medical services that are not covered under Part A. While the original Medicare program covers many health care items and services, it does not cover all health care expenses.

In addition to the original Medicare program, beneficiaries may elect to receive health care coverage under the Medicare+Choice (M+C) program under Part C of the Medicare program. This program provides beneficiaries with various options, including the right to choose a Medicare managed care plan or a Medicare private fee-for-service plan. Under the M+C program, an individual is entitled to those items and services (other than hospice care) for which benefits are available under Part A and Part B. An M+C plan may provide additional health care items and services that are not covered under the original Medicare program.

The Medicare Act gives beneficiaries specific rights to challenge particular types of decisions. CMS is committed to providing beneficiaries an opportunity to fully exercise these statutory rights. Moreover, we are committed to resolution of these disputes in a fair and efficient manner.

B. Claims Appeal Process

Under the original Medicare program, a beneficiary may generally obtain health services from any institution, agency, or person qualified to participate in the Medicare program that undertakes to provide the service to the individual. Assuming that a qualified provider or supplier has furnished medical care, the health care provider or supplier, or, in some cases, a beneficiary would submit a claim for benefits under the Medicare program. If the claim is for an item or service that falls within a Medicare benefit category, is reasonable and necessary for the individual, and is not otherwise statutorily excluded, then a government contractor, either a fiscal intermediary (for claims under Part A or Part B) or a carrier (for claims under Part B) would pay the claim. If the Medicare contractor determines that the medical care is not covered under the Medicare program, however, the Medicare contractor would deny the claim. In

fiscal year 2001, fee-for-service Medicare contractors adjudicated over 930 million initial claims and approximately 6.7 million claim appeals.

Except in a few narrow circumstances, an individual seeking Medicare payment for health care items or services cannot obtain an advance determination (before obtaining the item or service) on whether we would make Medicare payment. The Supreme Court has recognized that the Secretary must be given an opportunity to rule on a real claim, rather than rendering advisory opinions. See *Heckler* v. *Ringer*, 466 U.S. 602, 621–22 (1984).

If we deny a claim, we would provide notice to the beneficiary and give the beneficiary an opportunity to challenge the decision according to procedures we established in our regulations. We established an appeals process in our regulations under the fee-for-service program at 42 CFR part 405, subparts G and H. The statute requires that an individual exhaust these remedies before the individual may seek judicial review to challenge the Secretary's final decision. For purposes of this preamble, we would identify these procedures as the ''claims appeal process.'' This proposed rule does not seek to significantly alter the existing claims appeal process. Nor does this proposed rule significantly alter our existing regulations authorizing pre-service appeals for M+C beneficiaries as established at §§ 422.560 through 422.622.

Following exhaustion of these administrative remedies, the Medicare statute provides the opportunity for a dissatisfied individual to seek review in Federal court. As part of this civil action, a party may challenge the validity of a national coverage determination.

C. National Coverage Determinations (NCDs)

National Coverage Determinations (NCDs) are national policy statements that we publish to identify the circumstances under which particular services will be considered covered by Medicare. NCDs made under section 1862(a)(1) of the Social Security Act (the Act) have been nationwide, prospective, population-based policies that apply to clinical subsets or classes of Medicare beneficiaries and describe the clinical circumstances and settings under which particular services are reasonable and necessary (or are not reasonable and necessary). Our current regulations at § 405.732 and § 405.860 further recognize that the agency also has issued other types of NCDs, often related to scope of benefits under other statutory benefit categories that were made under ''other applicable provisions of the Act.'' Under our existing regulations, both scope of benefits NCDs and the NCDs made under section 1862(a)(1)(A) of the Act are controlling authorities for Medicare contractors—carriers, fiscal intermediaries (FIs), quality improvement organizations (QIOs), formerly known as Peer Review Organizations, health maintenance organizations (HMOs), competitive medical plans (CMPs), and health care prepayment plans (HCPPs). In addition, national coverage decisions are also controlling on M+C organizations (see § 422.101). Under our current regulations, only NCDs made under section 1862(a)(1) of the Act are controlling authorities for administrative law judges.

The procedures we use to develop NCDs were set forth in a **Federal Register** notice published April 27, 1999 (64 FR 22619 through 22625). Section 522 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554), enacted on December 21, 2000 (by creating section 1869(f)(4) of the Act) also establishes a revised process by which we would make NCDs in certain cases. We would set forth this NCD development process through a separate notice in the **Federal Register**.

D. Local Medical Review Policy (LMRP)

Local Medical Review Policies (LMRPs) are contractor-specific policies that identify the circumstances under which particular items or services will be (or will not be) considered covered and correctly coded. We authorize certain contractors to make LMRPs and define these contractors' LMRP jurisdiction in each contract or task order we enter into with a contractor. Each LMRP applies only in the jurisdiction (or part of a jurisdiction) of an individual contractor. LMRPs are currently developed by carriers, FIs, Durable Medical Equipment Regional Carriers (DMERCs), and Regional Home Health Intermediaries (RHHIs). The adoption of an LMRP by a contractor, however, does not preclude CMS from making an NCD.

A contractor may adopt an LMRP that has been developed individually or collaboratively with other contractors. The adoption of an LMRP through a collaborative effort by contractors does not constitute an NCD regardless of the number of contractors who decide to adopt the LMRP. An LMRP is not controlling authority for administrative law judges (ALJs) or the Departmental Appeals Board (Board) in the claims appeals process. These guidelines simply help to ensure that similar claims are processed in a consistent manner within those jurisdictions. LMRPs may not conflict with an NCD, but may be written in the absence of, or as an adjunct to, an NCD.

The Secretary instructs contractors on the procedures to be used in developing LMRPs and does so in program instructions. (See *http://www.cms.hhs.gov/manuals/108_pim/pim83c13.asp#sect4*) to review the current requirements regarding when contractors should develop LMRPs.) In addition, the Secretary has the authority to prescribe the criteria contractors will use when writing the medical necessity provisions in their LMRPs. (See *http://www.cms.hhs.gov/manuals/108_pim/pim83c13.asp#sect5.1*). Finally, the Secretary defines the process requirements contractors must follow in order to ensure that all interested parties—including beneficiaries, providers, manufacturers, associations, advocacy groups, and other members of the public—are afforded an opportunity to review and comment on most LMRPs before they become final. (See *http://www.cms.hhs.gov/manuals/108_pim/pimc13.asp#sec7.4*)

An LMRP may contain any or all of the following:

- Coding provisions.
- Benefit category provisions.
- Statutory exclusion provisions.
- Medical necessity provisions (provisions related to the authority under section 1862(a)(1)(A) of the Act, which prohibits payment for any expenses incurred for services that are not reasonable and necessary (often called the ''medical necessity'' provision.))

Some LMRPs contain only a single type of provision, while other LMRPs contain all four types. The provisions described in bullets two through four above constitute coverage provisions.

E. Differences Between NCDs and LMRPs

Under our claims appeals process, ALJs are not bound by LMRPs. Thus, an ALJ may rule that Medicare payment is due on a particular item or service received by a beneficiary, even if the contractor's LMRP clearly prohibited payment for the particular service. On the other hand, contractors and ALJs are bound by NCDs. ALJs may not review an NCD.

F. Individual Claim Determinations

It is important to note that contractors make individual claim determinations, even in the absence of an NCD or LMRP.

In these circumstances when there is no published policy on a particular topic, decisions are made based on the individual's particular factual situation. See *Heckler* v. *Ringer,* 466 U.S. at 617 (recognizing that the Secretary has discretion to either establish a generally applicable rule or to allow individual adjudication).

II. Impact of Section 522 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

A. Overview of the Legislation

Section 522 of BIPA created a new administrative review process that enables certain beneficiaries to challenge local coverage determinations (LCDs) and NCDs. These appeal rights are distinct from the existing appeal rights for the adjudication of Medicare claims. This section also creates additional avenues for beneficiaries to seek judicial review. Before BIPA, the statute did not provide an administrative avenue to challenge the facial validity of NCDs or LMRPs. BIPA defines LCDs as ''a determination by a fiscal intermediary or a carrier under part A or part B, as applicable, respecting whether or not a particular item or service is covered on an intermediary-or carrier-wide basis under such parts, in accordance with section 1862(a)(1)(A).''

B. New Definition: Local Coverage Determination (LCD)

Section 522 of BIPA does not use the term ''LMRP.'' Rather, it uses the term ''local coverage determination (LCD).'' This definition indicates that only those determinations made by FIs and carriers under the ''reasonable and necessary'' provision are to be considered LCDs.

C. Differences Between an LMRP and an LCD

As described in section I.D of this preamble, an LMRP may contain four different types of provisions (benefit category, statutory exclusion, medical necessity, and coding). An LCD, on the other hand, has been specifically defined in statute as a determination only under section 1862(a)(1)(A) of the Act's ''reasonable and necessary'' provision. For the purposes of this regulation, we will use the term ''medical necessity provision'' to describe section 1862(a)(1)(A) of the Act. We intend to work with contractors to divide LMRPs into separate LCD and non-LCD documents; it is likely that LMRPs will continue to exist for the next several years. During this time, the term LCD will refer to both of the following:

- Separate, stand-alone documents entitled ''LCDs'' that contain only medical necessity language; and
- The medical necessity provisions of an LMRP.

D. Impact of Section 522 of BIPA on the Definition of NCD

Section 522 of BIPA defines an NCD as ''a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under this title [title XVIII], but does not include a determination of what code, if any, is assigned to a particular item or service covered under this title or a determination with respect to the amount of payment made for a particular item or service so covered.'' This new statutory definition is not limited to only those determinations made under section 1862(a)(1) of the Act, but extends to benefit category and statutory exclusion determinations made by the Secretary as well. Typically, scope of benefits NCDs would further specify whether services would be covered under specific statutory categories that exist under Part A and Part B of the Medicare Act. (Section 1812, 1832, and 1861(s)). Thus, a scope of benefits NCD could be used to establish a policy on whether a particular device is considered durable medical equipment. Similarly, the Medicare Act prohibits payment for certain specific services. We may choose to establish an NCD describing those types of procedures (for example, whether care constitutes a routine physical examination, or cosmetic surgery). Therefore, as we discuss later in section III.A of this preamble, we are proposing to revise the definition of an NCD in § 400.202 to include those determinations made by the Secretary on grounds other than section 1862(a)(1) of the Act with respect to whether or not a particular service is covered and to reflect the statutory definition. We are proposing conforming changes to §§ 405.732 and 405.860 to reflect that any type of NCD may not be reviewed by an ALJ.

Section 522 of BIPA enables certain individuals who are in need of an item or service to challenge an NCD that would deny coverage of that item or service in an administrative proceeding before the Board.

Under section 1869(f)(4)(C) of the Act, for the purpose of reviews of NCDs, certain determinations that no national coverage or noncoverage determination is appropriate, are also subject to administrative review. Specifically, this right to review occurs only in cases in which there was no NCD, and a person with standing requested an NCD under section 1869(f)(4)(A) of the Act, and the Secretary determined that no national coverage determination would be made. We will identify this limited situation as a ''deemed NCD.'' In addition, if we have failed to meet a deadline we set under section 1869(f)(4)(A)(iv) of the Act, we are deemed to have made a determination that no coverage or noncoverage determination is appropriate.

E. Differences Between the Claims Appeal Process and the NCD/LCD Review Processes

As explained earlier in this preamble, the existing claims appeal rights are not significantly changed by section 522 of BIPA. Our claims appeal regulations will continue to provide detailed administrative appeal rights for beneficiaries whose claims are denied. These claims appeal procedures permit beneficiaries to challenge the initial claims denial and include *de novo* review by an independent ALJ. If still dissatisfied after exhausting all administrative remedies, a beneficiary has a right to seek judicial review in a Federal district court. This administrative system enables beneficiaries to submit any relevant information pertaining to this individual claim. Moreover, because LCDs are not controlling authorities for ALJs, an individual claim appeal could result in the claim being paid without the need to challenge the underlying LCD. Another section of BIPA, section 521, makes changes to those procedures with a different effective date. We would address any necessary revisions to our claims appeals regulations in future **Federal Register** documents.

We view section 522 of BIPA as creating an administrative review process that is separate and independent from the claims appeals process. The procedures used in section 522 for the BIPA administrative challenges process will be different, because the nature of the challenge and the relevant evidence is different. A challenge under section 522 of BIPA is a challenge to an entire policy, or specific provisions contained therein, and not just one claim denial. Therefore, section 522 of BIPA challenges may lead to changes that impact other beneficiaries if the policies are found to be unreasonable under the applicable standard for review.

Complaints under section 522 of BIPA also are subject to specific standing rules. Namely, under section 1869(f)(5) of the Act ''[a]n action under this subsection seeking review of a[n NCD]

or [LCD] may be initiated only by individuals entitled to benefits under part A, or enrolled under part B, or both, who are in need of the items or services that are the subject of the coverage determination.'' Only a beneficiary who has standing may bring an administrative challenge under section 522 of BIPA. Those rights cannot be assigned to anyone else. We are proposing to define ''in need'' as an aggrieved party who needs an item or service but has not yet received the item or service. At the time the complaint is filed, an aggrieved party may not have received the service that is the subject of the challenge, unless it is an item that is needed on an ongoing basis such as diabetic test strips. In general, the standing provision will require people seeking review of an NCD or LCD to receive the item or service after filing a challenge under section 522 of BIPA.

Although section 522 of BIPA does not enable a Medicare beneficiary to seek an advance determination on a particular claim or in advance of obtaining an item or service, an individual can challenge in advance of receiving an item or service the policy (LCD or NCD) that would cause the claim to be denied. As we discuss in greater detail in section III.E of this preamble, a successful challenge would result in the individual having his or her specific claim adjudicated without reference to the challenged policy. Claims that are otherwise payable, may be paid. In addition, a successful challenge to an LCD or NCD may result in the following:

- The policy being retired.
- Further agency action to modify the policy by clarifying the rationale or supplementing the record supporting the policy.

F. The Reconsideration Process

1. NCDs

We previously established a procedure by which individuals could seek reconsideration of policies established in an NCD. These procedures were set forth in the April 27, 1999 notice (64 FR 22619, 22625). In general, the reconsideration process permits any individual (not just aggrieved parties) to submit new evidence to us for review, or to suggest that we had misinterpreted existing evidence. We then review this evidence and do one of two things. First, if we believe that the evidence has merit and warrants a change to the NCD, we would revise the NCD and issue a new NCD in its place. If we do not believe the evidence warrants a change to the NCD, we would supplement the NCD record with this new evidence and reissue the NCD with no changes. A revised or reissued NCD becomes the policy subject to review under section 522 of BIPA.

We believe that CMS or contractor personnel with medical and scientific experience should first consider new clinical and scientific evidence to determine whether any changes to our coverage policies are necessary. The reconsideration process that we previously created was consistent with this approach. An aggrieved party may also submit new evidence in the coverage review processes. If new evidence is submitted during the coverage appeals process, those proceedings will be stayed in order for our policy makers or contractor clinical and scientific experts to consider the new clinical and scientific evidence. Once that reconsideration process is completed, the coverage review process will resume.

New evidence is any clinical or scientific evidence that was not previously considered by the agency or contractor when the NCD was issued.

2. Local Policy

The local policy reconsideration process is set forth in the Program Integrity Manual, Chapter 13, Section 11 (see *http//www.cms.hhs.gov/manual/108_pim/pim83c13.asp#sect11*). The local policy reconsideration process parallels the NCD reconsideration process.

New evidence is any clinical or scientific evidence that was not previously considered by the agency or contractor when the local policy was issued.

G. Difference Between an LCD/NCD Review and an LCD/NCD Reconsideration

The main difference between an LCD/NCD review under section 522 of BIPA and an LCD/NCD reconsideration is the avenue an individual chooses to take to initiate a change to a coverage policy. All interested parties, including an aggrieved party, could request a reconsideration of an LCD or NCD, rather than filing a complaint to initiate the review of an LCD or NCD. Conversely, only an aggrieved party could file a complaint to initiate the review of an LCD or NCD. If the aggrieved party believes that we, or the contractor, misinterpreted evidence or excluded available evidence in making the coverage determination or has new evidence to submit, then the aggrieved party has the option to file a request for a reconsideration by us or our contractor or file a complaint to seek review by an adjudicator.

In the reconsideration process, all interested parties, not just aggrieved parties, would have the opportunity to submit new scientific and medical evidence for review by individuals with medical and scientific expertise. The reconsideration process would permit experts to make judgments about those policies, rather than using an adjudicatory proceeding. Regardless of whether the reconsideration leads to a change in policy, we would update the LCD or NCD record to include the new evidence and, because of the new date of issuance, would establish a new NCD or LCD. The NCD or LCD updated by a reconsideration will lead to a new coverage determination that an aggrieved party may subsequently challenge by filing a complaint with the appropriate adjudicator. This is discussed in greater detail in section III.E of this preamble.

III. Provisions of the Proposed Rule

A. Overview

We are proposing that a Medicare beneficiary who qualifies as an aggrieved party may challenge an LCD or an NCD (or specific provisions therein) by filing an acceptable complaint with the Social Security Administration's Office of Hearings and Appeals (OHA) or the Board of HHS, respectively. The LCD or NCD review process is initiated if the applicable adjudicator determines the complaint to be acceptable.

In this proposed rule, we are proposing in § 400.202 to add a definition of the ''Board'' to mean the Departmental Appeals Board. We are also proposing to add a definition of ''Local coverage determination (LCD)'' and to revise the definition of ''National coverage determination (NCD).'' These definitions are specific to Medicare and would be revised to reflect the definitions for these terms found in section 522 of BIPA. The proposed rule would make clear that a determination of what code, if any, that is assigned to a service or a determination with respect to the amount of payment to be made for the service is not included in the definition of an LCD or an NCD. We use the term ''Services'' as defined in § 400.202 to include both ''items and services.''

We are proposing to revise paragraph (a) of § 405.732, ''Review of a national coverage decision (NCD),'' to state that an NCD is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under title XVIII. An NCD

does not include a determination of what code, if any, is assigned to a particular item or service covered under title XVIII or a determination with respect to the amount of payment made for a particular item or service. NCDs are made under section 1862(a)(1) of the Act or other applicable provisions of the Act. An NCD is binding on all Medicare carriers, fiscal intermediaries, QIOs, HMOs, CMPs, HCPPs, and ALJs.

We are proposing to revise paragraph (b) of § 405.732 to state that an ALJ may not disregard, set aside, or otherwise review an NCD. An ALJ may review the facts of a particular case to determine whether an NCD applies to a specific claim for benefits and, if so, whether the NCD has been applied correctly to the claim.

We are proposing to revise paragraph (c) of § 405.732 to state for initial determinations made before October 1, 2002, and for challenges to an NCD made under section 1862(a)(1) of the Act, a court's review of an NCD is limited to whether the record is incomplete or otherwise lacks adequate information to support the validity of the decision, unless the case has been remanded to the Secretary to supplement the record regarding the NCD. The court may not invalidate an NCD except upon review of the supplemental record.

We are proposing to revise paragraph (a) of § 405.860, ''Review of a national coverage determination (NCD),'' to state that an NCD is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under title XVIII. An NCD does not include a determination of what code, if any, is assigned to a particular item or service covered under title XVIII or a determination with respect to the amount of payment made for a particular item or service. NCDs are made under section 1862(a)(1) of the Act or other applicable provisions of the Act. An NCD is binding on all Medicare carriers, fiscal intermediaries, QIOs, HMOs, CMPs, HCPPs, and ALJs.

We are proposing to revise paragraph (b) of § 405.860 to state that an ALJ may not disregard, set aside, or otherwise review an NCD. An ALJ may review the facts of a particular case to determine whether an NCD applies to a specific claim for benefits and, if so, whether the NCD has been applied correctly to the claim.

We are proposing to revise paragraph (c) of § 405.860 to state for initial determinations made before October 1, 2002, and for challenges to an NCD made under section 1862(a)(1) of the Act, a court's review of an NCD is limited to whether the record is incomplete or otherwise lacks adequate information to support the validity of the decision, unless the case has been remanded to the Secretary to supplement the record regarding the NCD. The court may not invalidate an NCD except upon review of the supplemental record.

We are also proposing to add a new part 426, titled ''Reviews of Local and National Coverage Determinations,'' to title 42 of the CFR. In addition, we are proposing the following in part 426:

- Subpart A would contain general provisions applicable to the entire part.
- Subpart B would be reserved.
- Subpart C would contain the general provisions applicable to the review of LCDs and NCDs.
- Subpart D would contain the provisions specific to the review of LCDs
- Subpart E would contain the provisions specific to the review of NCDs.

B. Subpart A (General Provisions)

Subpart A of part 426 would specify the general provisions applicable to the entire part. Section 426.100, ''Basis and scope,'' would set forth the basis (under sections 1869(f)(1) and (f)(2) of the Act), and the scope would specify the requirements and procedures for the review of LCDs and NCDs. In § 426.110, we would define the terms used in part 426 whose definitions may not otherwise be implicit.

Under section 522 of BIPA, only an ''Aggrieved party'' may file a complaint to initiate the review of an NCD or an LCD. We would define ''Aggrieved party'' as a Medicare beneficiary who is entitled to benefits under Part A, enrolled under Part B, or both (including an individual enrolled in fee-for-service Medicare, in a Medicare+Choice plan, or in another Medicare managed care plan), and is in need of a service that is the subject of an applicable LCD (in the relevant jurisdiction) or an NCD, as documented by the beneficiary's treating physician.

To properly demonstrate that a beneficiary is ''in need,'' we are proposing that the beneficiary's treating physician document the need for the service. We believe this definition is consistent with the plain language of the statute and ensures that only beneficiaries who are aggrieved have standing to use this review process. Furthermore, we believe the statutory language allowing reviews of coverage determinations to be ''* * * initiated only by individuals * * * who are in need'' means individuals have not yet received the service that is the subject of the coverage determination. Therefore, an individual who has already received a service would not ordinarily qualify as an aggrieved party under our definition, and would not be eligible to initiate a review of a coverage determination regarding that service because he or she would no longer be in need of that service. However, there would be an exception for individuals who have a continuing need for a particular item or service that is subject to an NCD or LCD. We would require that an individual must be an aggrieved party at the time a complaint is filed, but we would not preclude an individual from receiving the service that is named in the complaint after the complaint is filed.

An individual who has an ongoing need for a service, or an individual who has received a service in the past but has a need to receive the service again (and has not received the service at the time a complaint has been filed) would meet our definition of aggrieved party because an unfulfilled need for the service exists.

We would define ''Contractor'' as a carrier (including a DMERC) or an FI (including an RHHI) that has jurisdiction for the LCD at issue. Specifically, a carrier or FI with LCD jurisdiction for a particular geographical area would be the contractor responsible for, among other things, providing the record of its LCDs.

We would define ''Deemed NCD'' as a determination that the Secretary makes in response to a request for an NCD by an aggrieved party under section 1869(f)(4)(B) and (C) of the Act, that no national coverage or noncoverage determination is appropriate, or the Secretary failed to meet the deadline under section 1869(f)(4)(iv) of the Act. Section 1869(f)(4)(C) of the Act deems certain decisions of the Secretary to be NCDs for purposes of administrative review. These circumstances would be as follows:

- When there was no NCD for a particular service.
- When an aggrieved party submits a request to the Secretary to make a determination about that service.
- When the Secretary determines that no national coverage or noncoverage determination is appropriate.

The statute directs that only these determinations are deemed to be NCDs that may be reviewed by the Board. The Supreme Court has recognized, however, that the Secretary's decision of whether to issue a generally applicable rule or to allow individual adjudication ''are clearly discretionary decisions.'' *Heckler* v. *Ringer,* 466 U.S. 602, 617 (1984).

We would define ''New evidence'' as clinical or scientific evidence that was not previously considered by us or the contractor before the NCD or LCD was issued.

We would define ''Party'' as an individual who has the right to participate in the LCD or NCD review process. A party includes an aggrieved party, a contractor, and, as appropriate, CMS. In the case of an LCD review, we may choose whether to be a party in the review along with the contractor. We believe that we, or our contractors, should be afforded an opportunity to participate in these reviews. These reviews involve challenges to important agency policies that may impact millions of beneficiaries. We believe either we or the contractors who issued the LCDs or NCDs should be given the opportunity to present evidence and make arguments supporting the rationale behind their coverage policies before an adjudicator issues a decision on whether the policies are reasonable. We note that we are always a party to an NCD review and contractors would not participate in an NCD review.

We would also define ''Reasonableness standard'' as the standard that an ALJ or the Board must apply when conducting an LCD or an NCD review. In determining whether NCDs or LCDs are valid, the adjudicator must uphold a challenged policy (or a provision or provisions of a challenged policy) if the findings of fact, interpretations of law, and applications of fact to law by CMS or the contractor are reasonable based on the NCD or LCD record. We are proposing to use the statutory language from sections 1869(f)(1)(A)(iii) and (f)(2)(A)(i) of the Act, which instructs adjudicators to defer only to the reasonable findings of fact, reasonable interpretations of law, and reasonable applications of fact to law by the Secretary.

We are requesting public comments on the feasibility of using an alternative dispute resolution (ADR) process and suggestions regarding how an ADR process could be used in an evidence-based review process.

C. Subpart B (Reserved)

We are proposing to reserve subpart B.

D. Subpart C (General Provisions for the Review of LCDs and NCDs)

We are proposing that the general provisions common to both the review of LCDs and NCDs would be established in subpart C. In § 426.300(a), we are proposing that the review of a challenged provision (or provisions) of an LCD is conducted by an ALJ only upon the receipt of an acceptable complaint as described in § 426.400. We are also proposing in § 426.300(b) that the review of a challenged provision (or provisions) of an NCD is conducted by the Board only upon the receipt of an acceptable complaint as described in § 426.500. An acceptable complaint can only be submitted to the applicable adjudicator by an aggrieved party. Additionally, § 426.300(c) would allow for the review of deemed NCDs, a process that would parallel the review of NCDs.

For the reasons described in section II.E of this preamble, we are proposing in § 426.310(a) to keep LCD and NCD reviews independent of the claims appeal processes set forth in part 405, subparts F and G; part 417, subpart Q; and part 422, subpart M. In § 426.310(b), we would also require an aggrieved party to notify the OHA or the Board of the disposition of any pending claim or appeal relating to the aggrieved party's LCD or NCD complaint. The aggrieved party would have to make this notification as soon as possible, regardless of the time during the coverage determination review that the aggrieved party filed a claim. As discussed earlier in this section of the preamble, we would allow the aggrieved party to receive a service after filing a complaint, without affecting the coverage determination review. However, in most circumstances, an individual could not obtain a service, submit a claim under the claims appeal process, and then seek to file a complaint because the individual would not satisfy the ''in need'' requirement.

In § 426.320(a), we are proposing that only an aggrieved party may initiate a review to challenge an LCD or NCD (or an existing specific provision or provisions of an LCD or an NCD) by filing an acceptable complaint. Sections 1869(f)(1)(A)(iii) and (f)(2)(A)(i) of the Act are very specific in allowing these reviews only to be initiated by an aggrieved party. Under this requirement, an aggrieved party would be allowed only to challenge language that exists within an LCD or NCD. Similarly, the statute does not allow for an aggrieved party to use this process to challenge anything that does not meet the definition of an LCD or an NCD (see § 426.320(b)). For example, draft LCDs and NCDs would be excluded from review as they are predecisional. LCDs and NCDs that are no longer in effect would also be excluded as they are no longer in effect. Other interpretive policies that are not LCDs or NCDs would also not be subject to review under this process.

Contractor policies that are not based on section 1862(a)(1)(A) of the Act, the ''medical necessity'' provision, would not be subject to review. The statutory language in section 522 of BIPA specifically limits the definition of LCDs to those documents or parts of documents that are based on section 1862(a)(1)(A) of the Act. Provisions of contractor policies, that are based on things other than the medical necessity statute, such as benefit category determinations, statutory exclusion determinations, and coding determinations, would not be subject to review under this part.

In addition, any M+C or other managed care plan policy, rule, or procedure would not be subject to review under this process. Further, the 522 complaint process is distinct from the pre-service appeal rights established for M+C plan and other Medicare managed care enrollees.

Individual claim determinations by adjudicators would also not be subject to review under this process. Beneficiaries who wish to appeal an individual claim determination must do so through the claims appeal process.

Although NCDs and deemed NCDs would be subject to review under this process, determinations not meeting those definitions would not be subject to review under this process. For example, a determination made by us at the request of a provider that no national coverage or noncoverage determination is appropriate would not be considered a deemed NCD because a deemed NCD would only be the result of an aggrieved party requesting an NCD under section 1869(f)(4) of the Act. These determinations, therefore, would not be subject to review under this process.

In § 426.330, we are proposing not to allow an aggrieved party to assign his or her rights to file a complaint against an LCD or NCD to any other individual or entity. Neither an ALJ nor the Board will recognize as valid any attempt to assign rights under section 1869(f) of the Act. In § 426.330(b), we are proposing that the aggrieved party filing the complaint bears the burden of proof and the burden of persuasion for the issue or issues raised in the complaint. The burden of persuasion will be judged by a preponderance of the evidence. While it is by no means required, we realize that some aggrieved parties may wish to retain representation.

In § 426.340, we are proposing that if an aggrieved party submits new evidence pertaining to an NCD or LCD, the administrative proceedings under part 426 will be stayed upon request from us or the contractor to consider the

additional clinical or scientific evidence. Following the review of this evidence, we or the contractor will file a supplemental record. Because the aggrieved party could submit new information that was not previously considered at several steps of the section 522 of BIPA review process, we are proposing that whenever an aggrieved party introduces new evidence, the section 522 of BIPA proceedings will be stayed upon request from us or the contractor in order to permit clinical and scientific experts to evaluate the evidence using the reconsideration process discussed earlier in this preamble. Thus, in the case in which an aggrieved party seeks to rely on new clinical or scientific evidence, the aggrieved party has a choice to file a review of the coverage policy with an appropriate external review entity under section 522 of BIPA or file a reconsideration review request, as discussed earlier in this preamble. In either case, our policy makers or the appropriate contractor clinical or scientific experts would be given the opportunity to formally consider the evidence submitted by the aggrieved party and revise our policy if the clinical and scientific evidence supports a change. Following the reconsideration, if necessary, a supplemental record would be prepared and section 522 of BIPA proceedings could continue. An aggrieved party is not prohibited from filing a simultaneous appeal with an adjudicator and a reconsideration review request with us or our contractor.

E. Subpart D (The Review of an LCD) and Subpart E (The Review of an NCD)

In subparts D and E, we are proposing to set forth the procedures for the review of LCDs and NCDs, respectively. The process for NCD reviews is largely the same as the process for LCD reviews. The major exceptions are as follows:

- NCDs may be based on other statutory provisions, not just section 1862(a)(1)(A) of the Act.
- NCD reviews are conducted by the Board.
- There is no role for ALJs or contractors in an NCD review.
- We are always a party to an NCD review.
- The process for taking an NCD out of effect is different than an LCD being ''retired.''
- Board administrative decisions regarding NCDs would be made available in a searchable format on the Medicare Internet site, with identifying information removed.

For the purpose of this preamble, we will consolidate the discussion of the requirements and policy decisions when possible. Sections 426.400 and 426.500 would contain the requirements for filing an acceptable complaint regarding a provision or provisions of an LCD and an NCD, respectively. In both cases, a complaint must be in writing and must be from an aggrieved party. In § 426.400(a), we would require that complaints regarding LCDs would have to be submitted to the OHA of the Social Security Administration, and complaints regarding NCDs would have to be submitted to the Board of HHS (see § 426.500(a)). We would also require, in both cases, a valid complaint to contain the beneficiary-identifying information listed in § 426.400(c)(1) and § 426.500(c)(1) including the treating physician's certification that the beneficiary needs the service that is the subject of the coverage determination, and a statement from the treating physician that payment for the service is likely to be denied under that coverage determination.

We believe that the physician's certification is necessary to ensure that the individual is an aggrieved party (see our discussion of the definition of aggrieved party in section III.A of this preamble.) In § 426.400(b), we would further require that the complaint be received by the OHA or the Board (whichever is applicable) within 6 months of this certification so that reviews of coverage determinations will remain reasonably current. We are proposing that a complaint contain the physician's statement that payment for the service is likely to be denied under the coverage determination because we believe that this step will help to ensure an actual controversy exists.

We would also require the information in §§ 426.400(c)(2) and (c)(3) and 426.500(c)(2) and (c)(3), which is necessary to identify the LCD or NCD (or the specific provision or provisions of the LCD or NCD) that is (are) adversely affecting the aggrieved party. We also would require a statement from the aggrieved party that explains the rationale for the complaint and states whether the service has been received (which in some cases would indicate that the individual is not an aggrieved party) (see §§ 426.400(c)(3) and 426.500(c)(3).

We are also proposing, in §§ 426.400(c)(4) and 426.500(c)(4), to allow the aggrieved party to submit copies of clinical or scientific evidence that supports the complaint. In § 426.400(d), we are proposing that two or more aggrieved parties may initiate the review of an LCD by filing a single written complaint with the OHA if the conditions in § 426.400(d)(1)(i) and (d)(ii) are met. Similarly, in § 426.500(d), we are proposing that two or more aggrieved parties may initiate the review of an NCD by filing a single complaint with the Board if the conditions in § 426.500(d)(1)(i) and (ii) are met.

Section 426.405 would specify the authority of the ALJ during an LCD review, including authority during a hearing, if applicable, as well as the authority that an ALJ would not have during an LCD review (see § 426.405(d)). We believe that the authority that would be granted to, and the authority that would not be granted to, an ALJ during an LCD review by this section is consistent with the statute and with common practice in other administrative proceedings. Similarly, in § 426.505, we would set forth the specific authority of the Board during an NCD review, if applicable, as well as the authority that the Board would not have during an NCD review (see § 426.505(d)).

Sections 426.406 and 426.506 would prohibit ex parte contacts so that no party or person (except employees of the ALJ's office) would communicate in any way with the ALJ on any substantive matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

In § 426.410, we would establish the ALJ's role in docketing and evaluating the acceptability of LCD complaints. These procedures would be very similar to the Board's role in docketing and evaluating the acceptability of NCD complaints proposed in § 426.510. Under the procedures, the adjudicatory body would receive and docket the complaint (which, at the discretion of the adjudicators, could include the name of the coverage determination rather than the individual bringing the challenge), evaluate the acceptability of the complaint, and take similar actions thereafter.

We are proposing in §§ 426.410 and 426.510 the criteria that a complaint would have to meet to be considered as an acceptable complaint by an ALJ or the Board. An aggrieved party must file the complaint; the complaint must meet all of the requirements of a valid complaint regarding an LCD in § 426.400, or regarding an NCD in § 426.500, and could only be challenging a policy that meets the definition of an LCD or an NCD.

If a complaint is deemed to be unacceptable after having been evaluated under §§ 426.410(b) and

426.510(b), the applicable adjudicator would provide the aggrieved party (or parties) one opportunity to amend the unacceptable complaint within a timeframe set forth by the adjudicator (see §§ 426.410(c) and 426.510(c)). If the aggrieved party (or parties) does not submit an acceptable amended complaint within this time frame, the adjudicator would issue an administrative decision dismissing the unacceptable complaint. We are seeking public comment on whether an aggrieved party should also be precluded from filing another complaint on the same issue for some period of time.

If after having been evaluated under §§ 426.410(b) and 426.510(b), a complaint is accepted, the adjudicator would send a letter to the aggrieved party (or parties) acknowledging the complaint and informing them of the docket number (see § 426.410(d)). The adjudicator would also forward a copy of the complaint and the acknowledgement letter to the applicable contractor and us, and request that we or the contractor send a copy of the LCD record to the ALJ and all parties to the LCD review. We believe that these steps will provide all parties involved in the LCD review with the information to proceed with the review. The corresponding section in § 426.510(d) would require the adjudicator to follow the same process for NCDs.

In §§ 426.410(e) and 426.510(e), we would allow for adjudicators to consolidate complaints regarding LCDs and NCDs, respectively. Under this provision, several complaints could be consolidated into one review if the complaints were appropriately similar. The review processes would not be affected by a decision to consolidate complaints into one review. Rather, consolidation would only be a tool to reduce the burden of multiple or duplicative challenges to the same policy.

In § 426.415, we would provide information identifying the person who would represent the contractor in the LCD review process to the ALJ, and all parties to the LCD review. We would make a decision whether the agency or the contractor would participate in the LCD review. Under the corresponding section in § 426.515, we would provide a copy of the NCD record (as described in § 426.518) to the Board and all parties to the NCD review.

Sections 426.418 and 426.518 would describe the elements of a contractor's LCD and NCD record, respectively. We are proposing that an LCD or NCD record would be composed of documents and materials that we, or the contractor, considered during the development of the LCD and NCD. In §§ 426.418(b) and 426.518(b), we would not include privileged material, proprietary data or any new evidence as part of the record under §§ 426.415 and 426.515 or otherwise prohibited from release by Federal law. Official records presented to the Board may contain proprietary data or information, if the information was used in reaching the NCD under appeal. In these instances, we would propose that proprietary information be protected from inappropriate disclosure according to all applicable statutes, regulations, or other formal, binding agreements governing use and release of the information. We are inviting public comments on the scope of proprietary data and the extent to which this material should be disclosed.

In § 426.420, we would allow a contractor to retire the LCD under review before the date the ALJ issues an administrative decision regarding the LCD. Retiring an LCD would mean that the contractor could no longer use that LCD in the adjudication of claims; thus, there would no longer be a need for an LCD review. In § 426.520, we would be allowed to repeal an NCD under review before the date the Board issues an administrative decision regarding that NCD. Repealing an existing NCD would mean this policy would no longer be a controlling authority for our contractors and certain adjudicators. Thus, there no longer would be a need for an NCD review concerning the superceded NCD.

Under §§ 426.423 and 426.523, we are proposing to permit aggrieved parties who filed the complaint to withdraw complaints regarding LCDs and NCDs, respectively. We would allow an aggrieved party to withdraw a complaint before the applicable adjudicator issues an administrative decision regarding the complaint by simply sending a written notice to the OHA, the applicable contractor, and us (if applicable) for LCDs, or to the Board and us for NCDs (see §§ 426.423(b) and 426.523(b)). Under this process, the adjudicator would issue an administrative decision (discussed later in this section of the preamble) dismissing the complaint, and the aggrieved party would not be able to file another complaint to the same coverage determination for 6 months. This proposal is designed to encourage disputes to be resolved in an efficient manner by discouraging a challenger from filing a complaint but voluntarily dismissing that challenge after significant administrative resources have been expended.

In the case of a joint complaint, one or more aggrieved parties may withdraw from the review without affecting the status of any remaining aggrieved party or parties named in the complaint. The adjudicator would issue an administrative decision dismissing the complaint for the aggrieved party or parties who wish to withdraw, and the review would continue until the adjudicator issued an administrative decision on the merits, or until each aggrieved party withdrew his or her respective complaint. Similarly, if the adjudicator had decided to hold a consolidated review, an aggrieved party or parties who are part of the consolidated review may withdraw without affecting the status of the other aggrieved party or parties who are part of the consolidated review (See §§ 426.423(c) and 426.523(c).

Sections 426.425 and 426.525 would contain the processes for LCD and NCD reviews, respectively, that take place once the record has been filed. Sections 1869(f)(1)(A)(iii) and 1869(f)(2)(A)(i) of the Act, as added by section 522 of BIPA, state that the adjudicators of NCD and LCD reviews, respectively, ''* * * shall review the record and shall permit discovery and the taking of evidence to evaluate the reasonableness of the determination, if the [adjudicator] determines that the record is incomplete or lacks adequate information to support the validity of the determination.'' Therefore, we would allow the aggrieved party who submitted the complaint to file a motion alleging that the LCD record (or the NCD record in the case of an NCD review) is not complete, not adequate to support the validity of the coverage determination, or both. This motion would be filed after the aggrieved party has had adequate time to review the record (we are proposing 30 days after receipt of the record, with an extension if requested). The motion would be submitted to the adjudicator, the contractor (if an LCD review), and us (if applicable) (see §§ 426.425(a) and 426.525(a)).

If the adjudicator determines that the record is not complete, not adequate to support the validity of the coverage determination, or both, the adjudicator would notify all parties to the review of this decision and allow discovery (as proposed in §§ 426.432 and 426.532 and discussed later in this section of the preamble). Therefore, discovery would be allowed only if the aggrieved party filed a motion that the record was not complete, not adequate to support the validity of the coverage determination, or both, and the adjudicator agreed with that motion.

If the adjudicator determines that the record is complete and adequate to support the validity of the coverage determination, the adjudicator would deny the motion, would not permit discovery, but would review the provision or provisions named in the complaint based on the reasonableness standard.

Under §§ 426.425(a)(3) and 426.525(a)(3), if an aggrieved party files a motion, based on new evidence, alleging that the contractor's LCD or NCD record is not complete, not adequate to support the validity of the LCD or NCD, or both, the Board or the ALJ would stay the proceedings upon request from us or the contractor to permit a consideration of the new evidence as described in § 426.340.

Under §§ 426.429 and 426.529, we would describe the process for submitting a supplemental record after new evidence has been considered under § 426.340. An aggrieved party may request additional discovery or continue the process to seek a decision by the ALJ or the Board.

Under §§ 426.430 and 426.530, we are proposing the ALJ's or Board's role in determining whether the contractor's LCD or our NCD record would be complete and adequate to support the validity of the LCD or NCD. In paragraph (a), we are proposing that if the aggrieved party does not file a motion described in § 426.425(a)(1) or § 426.429(a)(1), the ALJ or Board will review the contractor's LCD or our NCD record and apply the reasonableness standard, as described in § 426.431.

In paragraph (b) of §§ 426.430 and 426.530, we are proposing that if the aggrieved party files a motion described in § 426.425(a) or § 426.429(a), the ALJ or Board must: (1) Allow the contractor or us to submit a statement to the ALJ or Board and the aggrieved party responding to the motion described in paragraph (a) of this section; (2) review the contents of the LCD or NCD record, as described in § 426.418; (3) hold conferences, if necessary, which may be conducted (at the ALJ's or Board's discretion) either in person, or, by mutual agreement of the parties, by telephone, picture-tel, or any other means agreed upon by all parties involved; and (4) determine whether the contractor's LCD or our NCD record is complete and adequate to support the validity of the LCD or NCD.

In paragraph (c) of §§ 426.430 and 426.530, we are proposing the ALJ's or Board's role in determining the completeness of the contractor's LCD or our NCD record, and in determining the adequacy of the contractor's LCD or our NCD record to support the validity of the LCD or NCD.

We are considering requiring the petitioner in an NCD or LCD proceeding before the adjudicator to submit a statement about the factual and legal basis on which that party considers that record to be ''incomplete'' and/or to ''lack adequate information to support the validity of the determination,'' and an offer of proof supporting any factual allegations on the ''incompleteness'' of the record. CMS or the contractor would respond in writing to this statement of ''incompleteness.'' The adjudicator would review the NCD or LCD record and both parties' submissions. If the adjudicator concluded that the NCD or LCD record is complete and adequate to support the validity of the determination, the adjudicator could issue a written decision to that effect. This decision would then constitute a final agency action, appealable to court. If the adjudicator determined that the record was incomplete or lacked adequate information, the adjudicator could issue a written ruling explaining the reasons for this decision. The adjudicator would then be required to permit discovery and to hold a hearing for the taking of additional evidence on any material issues of fact. Both parties could supplement the record at this stage of the review process. We seek comments on whether this ''adequacy of information'' determination procedure by the adjudicator would lead to more prompt resolution of cases and better utilization of resources for all parties involved.

Under §§ 426.431 and 426.531, we would describe the process that adjudicators would use to review the provision(s) named in a complaint based on the reasonableness standard. We would require the adjudicator to confine the review to the provision(s) of the coverage determination named in the complaint and to the clinical or scientific evidence contained in the record (or supplemental record). The adjudicator would have the option to consult with impartial scientific or clinical experts, and consider any previous ALJ or Board administrative decision (made under part 426) regarding the same provision(s) named in the complaint. We are proposing that previous ALJ or Board administrative decisions made under this part may be considered, but are not a controlling precedent. It is possible that a later challenger may introduce pertinent clinical or scientific evidence that was not submitted in the previous proceedings. We are requesting public comment on this approach.

In addition, the adjudicator would have the option, under § 426.431(b) and 426.531(b), to conduct a hearing, and allow subpoenas and the taking of evidence (discussed in the section of the preamble on § 426.440 and § 426.540).

In §§ 426.431(c) and 426.531(c), we are proposing that ALJs and the Board would be bound by applicable provisions of the Act, our regulations, and rulings. Moreover, NCDs would be controlling authorities for ALJs. This policy is consistent with section 1869(f)(1)(A)(i) of the Act.

Under §§ 426.432 and 426.532, we are proposing that in paragraph (a), if the ALJ or Board orders discovery, the ALJ or Board would establish a reasonable timeframe for discovery, ensure that a party to the LCD or NCD review who receives a discovery request has certain rights, and ensure that a nonparty to the LCD or NCD review who receives a discovery request has the same rights in responding to a discovery request as any party. In paragraph (b), we are proposing that any party or nonparty receiving a discovery request may file a motion for a protective order before the date of production of the discovery.

Under §§ 426.432 and 426.532, we would also set forth the rules for discovery during an LCD or NCD review, respectively. Only an ALJ could order discovery during an LCD review if the ALJ found the contractor's LCD record to be incomplete, inadequate to support the validity of the LCD, or both, and after a motion had been filed under § 426.425. Likewise, only the Board could order discovery during an NCD review if the Board found our NCD record to be incomplete, inadequate to support the validity of the NCD, or both, and after a motion had been filed under § 426.525. We would require the adjudicator to establish a timeframe for the discovery process.

In § 426.432(c), § 426.432(d), and § 426.432(e), we are proposing that only documents relating to a specific LCD or NCD be eligible for discovery. The sections relating to discovery do not require the creation of any document. We believe that this is consistent with normal practice and will avoid unnecessary delays in the coverage determination reviews.

Under § 426.432(f), we are proposing that an adjudicator may order us or our contractor to provide an index of any documents withheld on the basis of privilege and, if necessary, conduct an in-camera review of any documents withheld on the basis of privilege.

While reviewing a provision of an LCD or NCD based on the reasonableness standard, the adjudicator may, if necessary, issue subpoenas,

consult with appropriate clinical or scientific experts, and take evidence during a hearing. In §§ 426.435 and 426.535, we are proposing the process for obtaining and responding to, subpoenas during a coverage determination review. A request for a subpoena to require the attendance of an individual at a hearing (or provide evidence at a hearing) would have to be filed with the adjudicator by a party to the coverage determination review at least 30 days before the hearing is scheduled. In addition to designating the witnesses (and their locations) and the evidence to be produced by those witnesses, the subpoena would have to state the facts that the party expects the witness to establish, and state whether these facts could be established by other evidence or without the use of a subpoena. We believe that this will serve the purpose of ensuring that only those witnesses closest to, and most familiar with, the coverage determinations will be subpoenaed to a hearing and will allow the adjudication to exclude irrelevant matters. Because an LCD or NCD review is limited to the scientific and clinical evidence pertaining to the matter at the time the LCD or NCD was issued, testimonial evidence must be related to the appropriate time period. We are proposing in § 426.340 that if an expert submits new clinical and scientific evidence, additional action by us or the contractor may be necessary.

The subpoena sections also detail the role of adjudicators in granting subpoenas, the role of a party in serving a subpoena, and the role and rights of the individual receiving a subpoena (including the right to file a motion to quash a subpoena). In addition, in §§ 426.435(h) and 426.535(h), we would also set forth the remedy afforded under section 205(e) of the Act, if a subpoena is not obeyed.

We are proposing the rules relating to evidence in coverage determination reviews in §§ 426.440 and 426.540. Under §§ 426.440(a) and 426.540(a), the ALJ or Board would determine the admissibility of evidence consistent with § 426.340. Under §§ 426.440(f) and 426.540(f), we would require experts submitting reports to be available for cross-examination at an evidentiary hearing. Under §§ 426.440(g) and 426.540(g), we would require that, unless otherwise ordered by the adjudicator for good cause, all documents and other evidence be open to examination by all parties to the review.

In §§ 426.441 and 426.541, we are proposing that the adjudicator notify all parties when the discovery period is closed.

Under §§ 426.444 and 426.544, we would describe an adjudicator's dismissal for cause of a complaint regarding an LCD or an NCD, respectively. A dismissal would be effectuated by the issuance of an administrative decision dismissing a complaint. In general, an adjudicator may dismiss a complaint if an aggrieved party (or his or her representative) fails to attend or participate in a pre-hearing conference or hearing without good cause or fails to comply with a lawful order from an adjudicator (see §§ 426.444(a) and 426.544(a)). Under §§ 426.444(b) and 426.544(b), we would require that the adjudicator dismiss complaints that fail to meet the requirements for acceptable complaints, including complaints regarding inapplicable policies or determinations. We would also require that the adjudicator must also dismiss a complaint if the aggrieved party withdraws the complaint, or if the complaint seeks review of a matter beyond the adjudicator's authority.

If an aggrieved party dies after initiating the coverage determination complaint process and after filing an initial claim for benefits, the aggrieved party's estate could pursue payment under the claims appeals process, but the estate may not pursue a policy challenge.

Under §§ 426.444(b)(6), we would also require an ALJ to issue an administrative decision dismissing a complaint if the applicable contractor was to notify the ALJ that the LCD is being retired. When a contractor decides to retire an LCD, it means that the LCD (or the provision(s) of the LCD removed as part of the revision) cannot be used in the adjudication of claims after the date of issuance of the retirement. We would require that the LCD would no longer be effective within 30 days of the date of notifying the ALJ. We are proposing this rule because retiring an LCD ensures that the LCD will no longer be used in that particular jurisdiction and renders a challenge to the policy moot. Similarly, in § 426.544(b)(6), we would notify the Board that the NCD is no longer in effect.

Under §§ 426.444(c) and 426.544(c), we would require that an adjudicator may, at the request of any party, or on his or her own motion, dismiss a complaint if the adjudicator has already issued an administrative decision on the LCD or the NCD or provisions of an LCD or an NCD and the aggrieved party has not presented any new clinical or scientific evidence that supports the complaint.

In §§ 426.445 and 426.545, we would require that witness fees, for appearances during a hearing, be paid by the party seeking to present the witness.

Under §§ 426.446 and 426.546, we would require that an ALJ and the Board, respectively, ensure that any hearing conducted regarding a coverage determination review is open to the public and mechanically or stenographically recorded. While these proceedings are open to the public, adjudicators are under no obligation to announce or publicize these proceedings. Further, the public has no right to participate in these proceedings. These sections would also require that all evidence upon which the adjudicator relies for a decision be contained in the record, and that any pertinent document or record be incorporated into the record of the coverage determination hearing.

Under §§ 426.447 and 426.547, we would set forth the procedures for the issuance and notification of ALJ and Board administrative decisions, respectively. The applicable adjudicator, within 90 days from closing the review record to the taking of evidence, would be required either to issue an administrative decision, or provide notice that the administrative decision is pending, and an approximate date a decision will be issued. In § 426.547(b), we would explain that Board administrative decisions regarding NCDs would be available on the Medicare Internet site of the Department of Health and Human Services. Steps would also have to be taken to ensure the privacy of the parties to the review, in conjunction with applicable statutes and regulations.

Under § 426.450, we would describe the required elements of an ALJ's administrative decision regarding an LCD. In § 426.550, we would similarly describe the required elements of the Board's administrative decision regarding an NCD. As discussed earlier in this section of the preamble, an administrative decision may include the dismissal of a complaint. If the complaint is not dismissed, the administrative decision would have to contain a statement pertaining to each provision listed in the complaint and stating whether the provision is valid or invalid under the reasonableness standard. We would also require that the administrative decision include the information in §§ 426.450(b) and 426.550(b), which include LCD review or NCD review identifying information, claim information (if known), a rationale for the basis of the administrative decision, a summary of

the evidence reviewed during the review, and the respective ALJ's or Board member's signature and date.

In §§ 426.455 and 426.555, we are proposing that an administrative decision be prohibited from doing any of the following:

- Ordering us or our contractors to take specific actions in modifying (including adding to, or deleting language from) a provision(s) of an LCD or NCD.
- Ordering us or our contractors to pay a specific claim.
- Establishing a time limit for the establishment of a new or revised LCD or NCD.
- Reviewing or evaluating an LCD or NCD other than the LCD or NCD under review.
- Including a requirement for us or our contractors that specifies payment, coding, or systems changes for an LCD or NCD, or deadlines for implementing these changes.

In §§ 426.460 and 426.560, we would describe the effect of administrative decisions issued under §§ 426.447 and 426.547. We are proposing these provisions because we believe that the exact wording of a new coverage determination should be made by the contractor or us. These policies affect other beneficiaries and, thus, these determinations should be made by clinicians and scientific experts who have the necessary specialized training. Thus, we and the contractor would remain the entities responsible for ensuring that the clinical and scientific policies are sound, resulting in the best quality of care for beneficiaries.

The effect of an administrative decision would depend on the outcome of the coverage determination review. If the adjudicator found that the provision(s) named in the complaint was (were) valid under the reasonableness standard, the aggrieved party or parties (in the case of an LCD review) could appeal that decision to the Board or (in the case of NCD review) may challenge the final agency action in Federal court.

If the adjudicator found that the provision(s) listed in the complaint was (were) invalid under the reasonableness standard and the contractor or we do not appeal this decision to the Board in a timely manner, the contractor must or we will do several things. First, there would be individual claim relief for the aggrieved party or parties named in the complaint(s).

- If the aggrieved party received (fee-for-service or managed care) service that was the subject of the challenged coverage determination after the date the complaint was filed, and a claim has been filed, then we would instruct the contractor (if applicable) or Medicare managed care organization not to use the provision(s) of the coverage determination that was (were) found invalid in the adjudication of that claim.
- If the aggrieved party has not received the service, the individual may obtain the service and file a claim, which could be reviewed by the contractor, without using the provision that has been found invalid.

Neither the first level appeal reviewer nor the hearing officer would be bound by the invalidated provision, as they were bound at the initial claim determination. Specifically, we would instruct the contractor to make a claim determination without using the LCD or NCD provision(s) that has been found invalid in each of the following situations: (1) The claim has not been adjudicated; (2) the claim was denied but not appealed, in which case the contractor must re-open the claim; or (3) the claim was adjudicated, denied and appealed at any level. It is important to note that individual claim relief can only be provided to an aggrieved party if his or her individual claim or appeal has not been paid during the individual claims adjudication process.

Second, there would be additional relief. Within 30 days of the issuance of the administrative decision, we or the contractor would have to send a letter to the aggrieved party and the adjudicator announcing the intent to either retire the coverage determination, or conduct a reconsideration of that policy. As discussed earlier, the retirement of a coverage determination means that it can no longer be used in the adjudication of claims. And, as also described earlier, a reconsideration of a coverage determination could result in a new LCD or NCD that does one of the following:

- Supplements the record or rationale and reaffirms the coverage determination.
- Revises the coverage determination.
- Retires the coverage determination.

Supplementing the record could include the addition to the record of evidence that was not in the LCD or NCD record, or a more detailed rationale as to why the contractor or we believe the LCD or NCD should remain in effect. Although the specific language of the LCD or NCD may not change in this case, the LCD or NCD would have to be reissued to reflect the updated decision and record.

Under § 426.462, ''Notice of an ALJ's administrative decision,'' we are proposing that after the ALJ has made a decision regarding an LCD complaint, the ALJ would send a written notice of the administrative decision to each party. The notice must contain a finding with respect to the LCD complaint and inform each party to the determination of his or her rights to seek further review if he or she is dissatisfied with the determination, and the time limit under which an appeal must be requested.

Under § 426.562, ''Notice of the Board's administrative decision,'' we are proposing that after the Board has made a decision regarding an NCD complaint, the Board would send a written notice of the administrative decision to each party. The notice must contain a finding with respect to the coverage complaint and inform each party to the determination of his or her rights to seek further review if he or she is dissatisfied with the determination, and the time limit under which an appeal must be requested.

In the remainder of the sections proposed in subpart D, we would set forth the procedure for appealing an ALJ's administrative decision regarding an LCD review. In § 426.465(a), we are proposing that an aggrieved party may appeal part or all of an ALJ's administrative decision that states that a provision of the LCD listed in the complaint is valid under the reasonableness standard, or that dismisses a complaint (with certain exceptions). We would also allow an aggrieved party who was part of a joint complaint or a consolidated LCD review to appeal an ALJ's administrative decision either independently or as a group.

In § 426.465(b), we are proposing that we or our contractor be allowed to appeal an ALJ decision that an LCD was unreasonable to the Board.

In § 426.465(c), we are proposing that the implementation of the ALJ decision will be stayed pending review by the Board.

In § 426.465(d), we are proposing not to allow an aggrieved party to appeal a dismissal in certain circumstances, namely, if the aggrieved party who filed the complaint withdraws the complaint, or because the contractor retired the LCD.

Under § 426.465(e), we are proposing that an appeal would have to be submitted to the Board within 60 calendar days of the date the ALJ's administrative decision was issued. We believe this is a reasonable timeframe to allow a party to make a decision on whether to appeal and to prepare the necessary documents, but we would permit the Board to consider a late appeal if good cause is shown by the party.

Section 426.465(f) would list the necessary components of an appeal to identify the relevant parties and issues.

In § 426.565, ''Board's role in making an LCD or NCD review record available,'' we are proposing that upon a request from a Federal Court, the Board must provide to the Federal Court, a copy of the Board's LCD or NCD review record (as described in § 426.567).

In § 426.467, ''Board's LCD review record,'' we are proposing in paragraph (a) that except as provided in paragraph (b) of this section, the Board's LCD review record consists of any document or material that the Board compiled or considered during an LCD review, including, but not limited to, the following:

- The LCD complaint.
- The LCD and LCD record.
- The supplemental LCD record, if applicable.
- The Board's administrative decision.
- Transcripts of record.
- Any other relevant evidence gathered under § 426.440.

We are proposing in paragraph (b) that the LCD record would not include material that is privileged or otherwise prohibited from release by Federal law.

In § 426.567, ''Board's NCD review record,'' we are proposing in paragraph (a) that except as provided in paragraph (b) of this section, the Board's NCD review record consists of any document or material that the Board compiled or considered during an NCD review, including, but not limited to, the following:

- The NCD complaint.
- The NCD and NCD record.
- The supplemental NCD record, if applicable.
- The Board's administrative decision.
- Transcripts of record.
- Any other relevant evidence gathered under § 426.540.

We are proposing in paragraph (b) that the NCD record would not include material that is privileged or otherwise prohibited from release by Federal law.

In § 426.468, we propose that an aggrieved party who initiates an LCD review, but does not appeal any part or parts of an ALJ's administrative decision to the Board in a timely manner, would waive his or her right to any further review of that part or those parts.

In § 426.470, we are proposing that the Board's role in docketing and evaluating the acceptability of appeals of ALJ administrative decisions would be similar to the process that an ALJ would use in docketing and evaluating the acceptability of a complaint. The Board would assign a number to the appeal and determine if it meets all of the requirements of an acceptable appeal proposed in § 426.465. Unlike the evaluation of an initial complaint, however, we would require, in § 426.470(c), that the Board issue an administrative decision dismissing an unacceptable appeal, instead of allowing an opportunity to amend an unacceptable appeal. If the Board determines that the appeal is acceptable, in § 426.465(d), we would require the Board to send notification to the aggrieved party (or parties), to the contractor, and, if applicable, to us. The Board would also request a copy of the LCD review record (discussed later in this section of the preamble) from the ALJ who issued the administrative decision.

Upon the request from the Board to provide copies of the LCD review record under § 426.470, we would require that an ALJ send a copy of the LCD review record to the Board (see § 426.472). Under § 426.474, we would describe what the ALJ's LCD review record would contain. In general, the LCD review record consists of any document or material that the ALJ compiled or considered during the LCD review.

Once the Board has accepted an appeal to an ALJ's administrative decision and received the ALJ's LCD review record, we are proposing in § 426.476 the steps that the Board would take in reviewing the ALJ's administrative decision. In addition to reviewing the ALJ's LCD review record and the ALJ's administrative decision, the Board would allow the contractor or, if applicable, us, to submit a statement to the Board and the aggrieved party responding to the appeal. The final required step in the Board review of an ALJ's administrative decision would be to issue an administrative decision, which is discussed in more detail later in this section of the preamble. If the appeal of the ALJ's administrative decision is based on a disputed issue of fact, we would require that the Board base its administrative decision on whether the ALJ's administrative decision was supported by substantial evidence on the whole from the LCD review record. If the appeal of the ALJ's administrative decision is based on a disputed issue of law, we would require that the Board base its administrative decision on whether the ALJ's administrative decision is erroneous. If the appeal were based both on a disputed issue of fact and a disputed issue of law, the Board would base its administrative decision on both of the above standards.

We believe that the Board review of an appeal of an ALJ's administrative decision should remain a paper review of existing materials. Accordingly, we are proposing, in § 426.476(b), to prohibit the Board from considering any issue not raised in the parties' briefs, or considering any evidence that is not a part of the ALJ's LCD review record. In § 426.476(c), we would establish controlling authorities that the Board must consider when reviewing appeals of ALJ administrative decisions. These include the applicable provisions of the Act, our regulations and rulings, and NCDs.

In § 426.476(d), we would require the Board to dismiss an appeal of an ALJ's administrative decision if the contractor retired the LCD during the appeal.

In § 426.478, we are proposing to allow the contractor to retire an LCD during the Board's review of the ALJ's administrative decision. As stated in the previous paragraph, this would lead to the Board dismissing the appeal.

In § 426.480, we are proposing to allow a party to withdraw an appeal of an ALJ's administrative decision. The provisions proposed in this section, for a party acting alone or as part of a joint or consolidated appeal, would be the same as the provisions for withdrawing a complaint in § 426.423.

In § 426.482, we would require the issuance and notification of a Board administrative decision regarding an appealed ALJ administrative decision. These provisions would be the same as the provisions we are proposing for the issuance and notification of an ALJ administrative decision in § 426.445.

In § 426.484, we would set forth the mandatory provisions of a Board administrative decision regarding an appealed ALJ administrative decision. We would require the Board to either dismiss the appeal or, for each part of the ALJ's administrative decision named in the appeal, to issue a statement either upholding or reversing that part or all of the ALJ's administrative decision. Because the Board is conducting a review of the ALJ's administrative decision using the ALJ's LCD review record, and is not conducting a de novo review of the LCD itself, a Board administrative decision either upholding or reversing each part, or all of the ALJ's administrative decision is the proper outcome. The Board's administrative decision would also be required to include the information necessary to identify the appeal, the rationale for the Board's administrative decision, and the signature of a Board member.

In § 426.486, we would prohibit the Board's administrative decision from

including those provisions that we are proposing to exclude from the ALJ's administrative decision in § 426.455, for the reasons discussed earlier in this preamble. In § 426.488, we would set forth the effect of a Board administrative decision. Section 426.488(a) explains the relief that would be provided to a successful challenger. Moreover, there may be coverage relief. The contractor would have the option of either retiring the LCD, or conducting a reconsideration of the LCD, if the Board's administrative decision reversed an ALJ finding of validity under the reasonableness standard.

We note that if the Board's administrative decision is the reversal of an ALJ's administrative decision that dismissed a complaint regarding an LCD, the case would be remanded to the ALJ, and the LCD review would continue from the point at which it was dismissed by the ALJ.

We propose permitting the Board to remand cases to the ALJ in a limited number of circumstances. In § 426.489(a), we are proposing that the Board may remand a case to the OHA, if the ALJ's administrative decision that does not comply with § 426.340, § 426.405, § 426.450, § 426.455, and § 426.474, or does not include:

- Findings of fact.
- Interpretations of law.
- Applications of fact to law.
- Summary of evidence reviewed.
- The signature of the ALJ.

In § 426.489(b), we propose prohibiting the Board from remanding cases to an ALJ to review new or additional LCD evidence submitted during an appeal of an LCD complaint to the Board.

In § 426.489(c), we propose that the Board notify all parties to the complaint when an LCD complaint is remanded to OHA. Section 426.489(d) describes the actions that an ALJ will take upon receipt of a coverage complaint remand.

In § 426.489(d), we propose that upon receipt of Board remand, an ALJ will take any action this is consistent with the Board's remand order.

In § 426.490, we are proposing that a decision by the Board would constitute a final agency action and would be subject to judicial review. Neither the contractor nor we may appeal a Board administrative decision.

In § 426.570, we are proposing that a decision by the Board would constitute a final agency action and would be subject to judicial review. We may not appeal a Board administrative decision.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, 44 U.S.C. section 3506(c)(2)(A) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Sections 426.400 and 426.500

Sections 426.400, Procedure for filing an acceptable complaint to a provision (or provisions) of an LCD, and 426.500, Procedure for filing an acceptable complaint to a provision or provisions of an NCD, state that an aggrieved party may initiate a review of an LCD or NCD, respectively, by filing a written complaint and also state what sort of information is required in the complaint to justify that he or she qualifies as aggrieved party under our proposed definition at § 426.110. This documentation would include the certification of the beneficiary's treating physician that the beneficiary needs a service, and a statement from the treating physician that payment for the service is likely to be denied under a coverage determination.

We estimate that 3,000 LCD and 15 to 20 NCD complaints will be filed per year. We estimate that it will take the aggrieved party 4 hours to draft the complaint and gather the information to send to us. Thus, we estimate the national burden would be 12,080 hours annually.

Other sections discuss the filing of various motions, petitions, and notice that the aggrieved party is withdrawing the request for a hearing and appeal. These actions are all exempt from the PRA under 5 CFR 1320.4, *Coverage.* These actions are part of an administrative action; administrative actions are not covered by the PRA or its regulations.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, Information Technology Investment Management Group, Attn.: Julie Brown, CMS–3063–P, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the substantive comments in the preamble to that document.

VI. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), as amended by Executive Order 13258, and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), as amended. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). We believe that this rule will not meet the $100 million threshold and, therefore, is not a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory

impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We do not believe that this rule would have an effect on the governments mentioned, nor would the private sector costs associated with the rule be greater than $110 million.

B. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule would not have a substantial effect on State or local governments.

C. Anticipated Effects

1. Effects on Medicare Beneficiaries

In developing this proposed rule, we considered how to make it user-friendly for the individual beneficiaries who qualify as aggrieved parties to initiate the review of an LCD or an NCD. Possible access obstacles for some aggrieved parties include limited financial resources, limited mobility, various disabilities, absence of legal representation, and difficulty in compiling and presenting scientific and clinical materials. We have sought to include means to alleviate these obstacles as much as possible through this proposed rule, but would also expect the ALJs and the Board to use the flexibility proposed for them in this rule to respond to obstacles that may confront individual aggrieved parties in particular cases.

Some concerns may remain about how to facilitate participation, especially when evidence is taken in person, by aggrieved parties with limited mobility or resources. The proposed rule seeks to address this by providing for most evidence to be submitted in written form and by allowing use of a variety of electronic means for remote attendance at any oral proceeding, if one is needed. In addition, the rule provides flexibility for ALJs and the Board to tailor proceedings in each case to best reflect the needs of the parties, the appropriate scope of participation, and the nature of the issues presented.

While we would require some documentation to support a complainant's assertions of being an aggrieved party (see §§ 426.400 and 426.500), we would accept that documentation as sufficient to show standing to challenge an LCD or an NCD. In this way, we seek to minimize disputes over beneficiaries' factual circumstances, to alleviate privacy concerns about confidential medical records and other patient-specific information, and to reduce any intrusive discovery burden on beneficiaries.

Our intent is to ensure that beneficiaries fully understand these rights. Once a final rule is published, we expect to produce a user-friendly guide that beneficiaries may use to assist them in accessing this process. In addition, we specifically request public comments on additional procedures, consistent with the statute that would enable this process to work more efficiently.

We have also provided for appropriate measures to be taken to address confidentiality and privilege issues relating to privileged or confidential trade secrets, commercial information, or financial information.

2. Effects on Providers

We do not believe that the provisions of this rule would have an effect on providers, except to the extent that a provider would supply documentation that an aggrieved party is in need of a specific service, and that payment for the service would likely be denied under the LCD or NCD. It would also be possible for a provider to be subpoenaed under §§ 426.435 and 426.535, but proposed §§ 426.445 and 426.545 would allow for compensation under this circumstance. We believe that the rule would have an insignificant economic impact on health care providers or the health care industry as a whole.

3. Effects on the Medicare Program

The Medicare program would incur certain administrative costs associated with coverage determination reviews, the cost of being a party to coverage determination reviews, and the cost of reevaluating policies.

D. Alternatives Considered

We considered various alternative approaches for implementing the ALJ or Board administrative decisions with respect to an LCD and NCD. One alternative we considered was to allow an ALJ or Board to specify the type of relief that would be afforded to the aggrieved party in those instances in which an ALJ or the Board issued a finding of unreasonable under the reasonableness standard. We contemplated whether it would be feasible based on the record developed in this proceeding for an ALJ or the Board to order us to make payment for a particular claim for the individual. We determined, however, that because the record in a policy challenge adjudication focuses on the challenged policy, and not on the beneficiary's particular medical circumstances or entitlement to Medicare benefits, it would not be possible to allow an ALJ or the Board to order payment in those circumstances. In some cases, other statutory restrictions may apply for a particular claim that would prevent Medicare from making payment even if the LCD or NCD were found reasonable. For instance, if care were furnished by an excluded physician in other than an emergency situation, section 1862(e)(1) of the Act would bar Medicare payment. There are other examples where rules other than an NCD may lead to the denial of a claim. To avoid redundant claims/appeals processes, we have proposed that individual relief would be determined through our existing claims appeals procedures, but the LCD or NCD that was found unreasonable by the ALJ or the Board would not be applied.

Further, we do not believe that it is appropriate for an ALJ or the Board to write or rewrite coverage determinations. LCDs and NCDs are based on clinical and scientific evidence to develop policies that are both sound and effective, and continue to ensure the highest quality of covered care for Medicare recipients. For the sake of continuing to ensure that aggrieved parties receive the same quality care as all other Medicare recipients, and for the sake of efficiently administering this process, we believe that clinicians and scientific experts should continue to develop these policies. To have anyone other than a clinician or scientific

expert revise Medicare policy would not be in the best interest of the beneficiary that relies on receiving the highest quality care possible.

In accordance with the provisions of Executive Order 12866, as amended by Executive Order 13258, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 426

Administrative practice and procedure, Centers for Medicare & Medicaid Services, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, CMS proposes to amend 42 CFR chapter IV as follows:

PART 400—INTRODUCTION; DEFINITIONS

1. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. Amend § 400.202 by adding the definitions of ''Board'' and ''Local coverage determination (LCD)'' and by revising the definition of ''National coverage determination (NCD)'' to read as follows:

§ 400.202 Definitions specific to Medicare.

* * * * *

Board means the Departmental Appeals Board.

* * * * *

Local coverage determination (LCD) means a decision by a fiscal intermediary or a carrier under Medicare Part A or Part B, as applicable, whether to cover a particular service on an intermediary-wide or carrier-wide basis in accordance with section 1862(a)(1)(A) of the Act. An LCD does not include a determination of which code, if any, is assigned to a service or a determination with respect to the amount of payment to be made for the service.

* * * * *

National coverage determination (NCD) means a decision that CMS makes regarding whether to cover a particular service nationally under title XVIII of the Act. An NCD does not include a determination of what code, if any, is assigned to a service or a determination with respect to the amount of payment to be made for the service.

* * * * *

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

3. The authority citation for part 405 continues to read as follows:

Authority: Secs. 1102, 1155, 1869(b), 1871, 1872, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c–4, 1395ff(b), 1395hh, 1395ii, and 1395pp).

4. Revise § 405.732 to read follows:

§ 405.732 Review of a national coverage determination (NCD).

(a) General. An NCD is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under title XVIII. An NCD does not include a determination of what code, if any, is assigned to a particular item or service covered under title XVIII or a determination with respect to the amount of payment made for a particular item or service. NCDs are made under section 1862(a)(1) of the Act or other applicable provisions of the Act. An NCD is binding on all Medicare carriers, fiscal intermediaries, QIOs, HMOs, CMPs, HCPPs, and ALJs.

(b) Review by ALJ. (1) An ALJ may not disregard, set aside, or otherwise review an NCD.

(2) An ALJ may review the facts of a particular case to determine whether an NCD applies to a specific claim for benefits and, if so, whether the NCD has been applied correctly to the claim.

(c) Review by Court. For initial determinations made before October 1, 2002, and for challenges to an NCD made under section 1862(a)(1) of the Act, a court's review of an NCD is limited to whether the record is incomplete or otherwise lacks adequate information to support the validity of the decision, unless the case has been remanded to the Secretary to supplement the record regarding the NCD. The court may not invalidate an NCD except upon review of the supplemental record.

5. Revise § 405.860 to read as follows:

§ 405.860 Review of a national coverage determination (NCD).

(a) *General.* An NCD is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under title XVIII. An NCD does not include a determination of what code, if any, is assigned to a particular item or service covered under title XVIII or a determination with respect to the amount of payment made for a particular item or service. NCDs are made under section 1862(a)(1) of the Act or other applicable provisions of the Act. An NCD is binding on all Medicare carriers, fiscal intermediaries, QIOs, HMOs, CMPs, HCPPs, and ALJs.

(b) Review by ALJ.

(1) An ALJ may not disregard, set aside, or otherwise review an NCD.

(2) An ALJ may review the facts of a particular case to determine whether an NCD applies to a specific claim for benefits and, if so, whether the NCD has been applied correctly to the claim.

(c) Review by Court. For initial determinations made before October 1, 2002, and for challenges to an NCD made under section 1862(a)(1) of the Act, a court's review of an NCD is limited to whether the record is incomplete or otherwise lacks adequate information to support the validity of the decision, unless the case has been remanded to the Secretary to supplement the record regarding the NCD. The court may not invalidate an NCD except upon review of the supplemental record.

6. Add part 426 to read as follows:

PART 426–REVIEWS OF LOCAL AND NATIONAL COVERAGE DETERMINATIONS

Subpart A—General Provisions

Sec.

426.100 Basis and scope.
426.110 Definitions.

Subpart B—[Reserved]

Subpart C—General Provisions for the Review of LCDs and NCDs

426.300 Review of LCDs, NCDs, and deemed NCDs.
426.310 LCD and NCD reviews and individual claim appeals.
426.320 Challenges to LCDs and NCDs.
426.330 No assignment of rights by an aggrieved party.
426.340 Stay of proceedings for review of new evidence.

Subpart D—Review of an LCD

426.400 Procedure for filing an acceptable complaint to a provision (or provisions) of an LCD.
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PART 426—REVIEWS OF LOCAL AND NATIONAL COVERAGE DETERMINATIONS

Subpart A—General Provisions

§ 426.100 Basis and scope.

(a) *Basis.* This part implements sections 1869(f)(1) and (f)(2) of the Act, which provide for the review of LCDs, NCDs, and certain determinations that are deemed to be NCDs by statute.

(b) *Scope.* This subpart establishes the requirements and procedures for the review of LCDs and NCDs.

§ 426.110 Definitions.

For the purposes of this part, the following definitions apply:

Aggrieved party means a Medicare beneficiary who—

(1) Is entitled to benefits under Part A, enrolled under Part B, or both (including an individual enrolled in fee-for-service Medicare, in a Medicare+Choice plan, or in another Medicare managed care plan); and

(2) Is in need of a service that is the subject of an applicable LCD (in the relevant jurisdiction) or an NCD, as documented by the beneficiary's treating physician.

Contractor means a carrier (including a Durable Medical Equipment Regional Carrier), or a fiscal intermediary (including a Regional Home Health Intermediary) that has jurisdiction for the LCD at issue.

Deemed NCD means a determination that the Secretary makes, in response to a request for an NCD by an aggrieved party under section 1869(f)(4)(B) and (C) of the Act, that no national coverage or noncoverage determination is appropriate, or the Secretary failed to meet the deadline under section 1869(f)(4)(iv) of the Act.

New evidence means clinical or scientific evidence that was not previously considered by CMS or the contractor before the NCD or LCD was issued.

Party means an individual who has a right to participate in the LCD or NCD review process. A party includes an aggrieved party, a contractor, and, as appropriate, CMS.

Reasonableness standard means the standard that an ALJ or the Board must apply when conducting an LCD or an NCD review. In determining whether NCDs or LCDs are valid, the adjudicator must uphold a challenged policy (or a provision or provisions of a challenged policy) if the findings of fact, interpretations of law, and applications of fact to law by CMS or the contractor are reasonable based on the NCD or LCD record.

Subpart B—[Reserved]

Subpart C—General Provisions for the Review of LCDs and NCDs

§ 426.300 Review of LCDs, NCDs, and deemed NCDs.

(a) Upon the receipt of an acceptable LCD complaint as described in § 426.400, an ALJ conducts a review of a challenged provision (or provisions) of an LCD using the reasonableness standard.

(b) Upon the receipt of an acceptable NCD complaint as described in § 426.500, the Board conducts an NCD review of a challenged provision (or provisions) of an NCD using the reasonableness standard.

(c) The procedures established in this part governing the review of NCDs also apply in cases in which a deemed NCD is challenged.

§ 426.310 LCD and NCD reviews and individual claim appeals.

(a) LCD and NCD reviews are independent of the claims appeal processes set forth in part 405, subparts F and G; part 417, subpart Q; and part 422, subpart M of this chapter.

(b) An aggrieved party must notify the OHA or the Board, as appropriate, regarding the submission and disposition of any pending claim or appeal relating to the subject of the aggrieved party's LCD or NCD complaint. This reporting obligation continues throughout the entire LCD or NCD review process.

§ 426.320 Challenges to LCDs and NCDs.

(a) *Right to challenge.* Only an aggrieved party may initiate a review to

challenge an existing specific provision or provisions of an LCD or NCD by filing an acceptable complaint.

(b) *Exclusions from review.* Some items are not reviewable under this part, including:

(1) Pre-decisional materials, including—

(i) Draft LCDs;

(ii) Template LCDs or suggested LCDs; and

(iii) Draft NCDs, including national coverage decision memoranda.

(2) Retired LCDs or NCDs that are no longer in effect.

(3) Interpretive policies that are not an LCD or NCD.

(4) Contractor decisions that are not based on section 1862(a)(1)(A) of the Act.

(5) Contractor claims processing edits.

(6) Payment amounts or methodologies.

(7) Coding issues, including determinations, methodologies, definitions, or rules.

(8) Contractor bulletin articles, educational materials, or web site frequently asked questions.

(9) Any M+C organization or managed care plan policy, rule, or procedure.

(10) An individual claim determination.

(11) Any other policy that is not an LCD or an NCD as set forth in § 400.202 of this chapter.

§ 426.330 No assignment of rights by an aggrieved party.

(a) *Assignment of rights.* An aggrieved party may not assign his or her rights to file a complaint to a provision (or provisions) of an LCD or NCD to any other individual or entity. Neither an ALJ nor the Board will recognize as valid any attempt to assign rights under section 1869(f) of the Act.

(b) *Burden of proof.* During an LCD or NCD review, an aggrieved party bears the burden of proof and the burden of persuasion for the issue(s) raised in a complaint. The burden of persuasion will be judged by a preponderance of the evidence.

§ 426.340 Stay of proceedings for review of new evidence.

(a) If an aggrieved party submits new evidence, or the Board or ALJ admits new evidence, pertaining to an LCD or NCD, the Board or ALJ will send the new evidence to CMS or the contractor for review. Upon review of this new evidence, CMS or the contractor will determine whether a request for stay of administrative proceedings under this part 426 to consider the additional clinical or scientific evidence is necessary. Upon such a request, the Board or ALJ will do the following:

(1) Stay the proceedings.

(2) Set a reasonable timeframe within which CMS or the contractor will complete the review.

(3) Upon request of CMS or the contractor, extend the timeframe for the period of time requested by CMS or the contractor, unless the aggrieved party can demonstrate that the CMS contractor request is unreasonable.

(b) Following the CMS or the contractor review of this new evidence, CMS or the contractor will file a supplemental record.

Subpart D—Review of an LCD

§ 426.400 Procedure for filing an acceptable complaint to a provision (or provisions) of an LCD.

(a) *The complaint.* An aggrieved party may initiate a review of an LCD by filing a written complaint with the Social Security Administration, Office of Hearings and Appeals (OHA).

(b) *Timeliness of a complaint.* The OHA must receive a complaint within 6 months of the written statement described in paragraph (c)(1)(vi) of this section.

(c) *Components of a valid complaint.* A complaint must contain the following information:

(1) *Beneficiary-identifying information:*

(i) Beneficiary's name.

(ii) Beneficiary's mailing address.

(iii) Beneficiary's State of residence, if different from mailing address.

(iv) Beneficiary's telephone number.

(v) Beneficiary's Health Insurance Claim number.

(vi) A copy of the treating physician's certification that, in his or her medical opinion, the beneficiary needs the service that is the subject of the LCD.

(vii) A statement from the treating physician that Medicare coverage for the service needed is likely to be denied under the applicable contractor's LCD.

(2) *LCD-identifying information:*

(i) Name of the contractor using the LCD.

(ii) Title of final LCD being challenged.

(iii) The specific provision (or provisions) of the LCD adversely affecting the aggrieved party.

(3) *Aggrieved party statement.* A statement from the aggrieved party explaining the rationale for the allegation that the provision(s) of the LCD is (are) not valid under the reasonableness standard, and whether the aggrieved party has received the service related to the LCD.

(4) *Clinical or scientific evidence.* Copies of clinical or scientific evidence that supports the complaint.

(d) *Joint complaints*—(1) *Conditions for a joint compliant.* Two or more aggrieved parties may initiate the review of an LCD by filing a single written complaint with the OHA if all of the following conditions are met:

(i) Each aggrieved party named in the joint complaint has a similar medical condition.

(ii) Each aggrieved party named in the joint complaint is filing the complaint in regard to the same provision(s) of the same LCD.

(2) *Components of a valid joint complaint.* A joint complaint must contain the following information:

(i) The beneficiary-identifying information described in paragraph (c)(1) of this section for each aggrieved party named in the joint complaint.

(ii) The LCD-identifying information described in paragraph (c)(2) of this section.

(iii) The documentation described in paragraphs (c)(3) and (c)(4) of this section.

(3) *Timeliness of a joint complaint.* The OHA must receive a joint complaint within 6 months of the date of the documentation from each aggrieved party's treating physician expressing the belief that payment for the needed service would likely be denied under the LCD in question.

§ 426.405 Authority of the ALJ.

(a) An ALJ conducts a fair and impartial hearing, avoids unnecessary delay, maintains order, and ensures that all proceedings are recorded.

(b) An ALJ defers only to reasonable findings of fact, reasonable interpretations of law, and reasonable applications of fact to law by the Secretary.

(c) The ALJ has the authority to do any of the following:

(1) Review complaints by an aggrieved party (or aggrieved parties).

(2) Dismiss complaints that fail to comply with § 426.400.

(3) Set and change the date, time, and place of a hearing upon reasonable notice to the parties to the review.

(4) Continue or recess a hearing for a reasonable period of time.

(5) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(6) Consult with scientific and clinical experts on his or her own motion concerning clinical or scientific evidence.

(7) Set schedules for submission of exhibits and written reports of experts.

(8) Administer oaths and affirmations.

(9) Examine witnesses.

(10) Issue subpoenas requiring the attendance of witnesses at hearings as permitted by this part.

(11) Issue subpoenas requiring the production of existing documents before, and relating to, the hearing as permitted by this part.

(12) Rule on motions and other procedural matters.

(13) Regulate the scope and timing of documentary discovery as permitted by this part.

(14) Regulate the course of a hearing and the conduct of representatives, parties, and witnesses.

(15) Receive, rule on, exclude, or limit evidence, in accordance with § 426.340.

(16) Take official notice of facts, upon motion of a party.

(17) Decide cases, upon the motion of a party, by summary judgment when there is no disputed issue of material fact.

(18) Conduct any conference, argument, or hearing in person or, upon agreement of the parties, by telephone, picture-tel, or any other means.

(19) Issue administrative decisions.

(20) Exclude a party to an LCD review (or a party's representative) for failure to comply with an ALJ order or procedural request without good cause.

(d) The ALJ does not have authority to do any of the following under this part:

(1) Conduct an LCD review or conduct LCD hearings on his or her own motion or on the motion of a nonaggrieved party.

(2) Receive or accept any new evidence without following § 426.340.

(3) Review any decisions by contractors to develop a new or revised LCD.

(4) Conduct an LCD review of any draft, retired, template, or suggested LCDs.

(5) Conduct a review of any NCD according to section 1869(f)(1)(A)(i) of the Act.

(6) Conduct a review of the merits of an invalid LCD complaint.

(7) Conduct a review of any policy that is not an LCD, as defined in § 400.202 of this chapter.

(8) Compel mediation or settlement negotiations by aggrieved parties.

(9) Deny a request for withdrawal of a complaint by an aggrieved party.

(10) Compel the contractor to conduct studies, surveys, or develop new information to support an LCD record.

(11) Deny a contractor the right to retire an LCD.

(12) Deny a contractor or CMS the right to conduct a reconsideration review when any party submits new evidence.

(13) Make a determination under § 426.441 before a contractor's reconsideration of new evidence as described in § 426.340.

(14) Compel CMS or its contractors to conduct studies, surveys, or develop new information to support an LCD record.

(15) Find invalid applicable Federal statutes, regulations, rulings or NCDs.

(16) Enter an administrative decision defining the specific terms of a subsequent LCD.

§ 426.406 Ex parte contacts.

No party or person (except employees of the ALJ's office) will communicate in any way with the ALJ on any substantive matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 426.410 ALJ's role in docketing and evaluating the acceptability of LCD complaints.

(a) *Docketing the complaint.* The Office of Hearings and Appeals does the following upon receiving a complaint regarding an LCD:

(1) *Dockets the complaint.*

(2) Forwards the complaint to the selected ALJ.

(b) *Evaluating the acceptability of the complaint.* The ALJ assigned to the LCD review determines if the complaint is acceptable by confirming all of the following:

(1) The complaint is being submitted by an aggrieved party or, in the case of a joint complaint, that each individual named in the joint complaint is an aggrieved party. (In determining if a complaint is acceptable, the ALJ will assume that the facts alleged by the treating physician's statement regarding the aggrieved party's (or parties) clinical condition are true.)

(2) The complaint meets the requirements for a valid complaint in § 426.400 and does not challenge one of the documents in § 426.320(b).

(c) *Unacceptable complaint.*

(1) If the ALJ determines that the complaint is unacceptable, the ALJ must provide the aggrieved party (or parties) one opportunity to amend the unacceptable complaint.

(2) If the aggrieved party (or parties) fail(s) to submit an acceptable amended complaint within a reasonable timeframe as determined by the ALJ, the ALJ must issue an administrative decision dismissing the unacceptable complaint.

(d) *Acceptable complaint.* If the ALJ determines that the complaint (or amended complaint) is acceptable, the ALJ does the following:

(1) Sends a letter to the aggrieved party (or parties) acknowledging the complaint and informing the aggrieved party (or parties) of the docket number.

(2) Forwards a copy of the complaint and the letter described in paragraph (d)(1) of this section to the applicable contractor and CMS.

(3) Requests that CMS or the contractor send a copy of the LCD record to the ALJ and all parties to the LCD review.

(e) *Consolidation of complaints regarding an LCD*—(1) *Criteria for consolidation.* If two or more aggrieved parties submit separate acceptable complaints regarding the same provision(s) of the same LCD, an ALJ may, upon his or her own motion or by motion of any party to the LCD review, consolidate the complaints and conduct a consolidated LCD review if all of the following criteria are met:

(i) The complaints are in regard to the same provision(s) of the same LCD.

(ii) The complaints contain common questions of law, common questions of fact, or both.

(2) *Decision to consolidate complaints.* If an ALJ decides to consolidate complaints, the ALJ does the following:

(i) Provides notification that the LCD review will be consolidated and informs all parties of the new docket number.

(ii) Makes a single record of the proceeding.

(iii) Considers the relevant evidence introduced in each LCD challenge as introduced in the consolidated review.

(3) *Decision not to consolidate complaints.* If an ALJ decides not to consolidate complaints, the ALJ conducts separate LCD reviews for each complaint.

§ 426.415 CMS's role in the LCD review.

CMS will provide to the ALJ, and all parties to the LCD review, information identifying the person who will represent the contractor, if necessary, in the LCD review process.

§ 426.418 Contractor's LCD record.

(a) *Elements of a contractor's LCD record.* Except as provided in paragraph (b) of this section, the contractor's LCD record consists of any document or material that the contractor considered during the development of the LCD, including, but not limited to, the following:

(1) The LCD being challenged.

(2) Any relevant medical evidence considered on or before the date the LCD was issued, including, but not limited to, the following:

(i) Scientific articles.

(ii) Technology assessments.

(iii) Clinical guidelines.

(iv) Records from the Food and Drug Administration regarding safety and efficacy of a drug or device,

(v) Statements from clinical experts, medical textbooks, claims data, or other indication of medical standard of practice.

(3) Comment and Response Document (a summary of comments received by the contractor concerning the draft LCD).

(b) *Documents excluded from the contractor's LCD record.* The LCD record does not include the following:

(1) Material that is privileged.

(2) Any new evidence.

(3) Proprietary data.

§ 426.420 Retiring an LCD under review.

A contractor may retire an LCD under review before the date the ALJ issues an administrative decision regarding that LCD. Retiring an LCD under review has the same effect as an administrative decision under § 426.460(b).

§ 426.423 Withdrawing a complaint regarding an LCD under review.

(a) *Circumstance under which an aggrieved party may withdraw a complaint regarding an LCD.* An aggrieved party who filed a complaint regarding an LCD may withdraw the complaint before the ALJ issues an administrative decision regarding that LCD. The aggrieved party may not file another complaint to the same coverage determination for 6 months.

(b) *Process for an aggrieved party withdrawing a complaint regarding an LCD.* To withdraw a complaint regarding an LCD, the aggrieved party who filed the complaint must send a written notice announcing the intent to withdraw to the OHA (see § 426.400), CMS (if applicable), and the applicable contractor.

(c) *Actions the ALJ must take upon receiving a notice announcing the intent to withdraw a complaint regarding an LCD*—(1) *LCD reviews involving one aggrieved party.* If the ALJ receives a notice announcing the intent to withdraw a complaint regarding an LCD before the date the ALJ issued an administrative decision regarding that LCD, the ALJ issues an administrative decision dismissing the complaint under § 426.444 and informing the aggrieved party that he or she may not file another complaint to the same coverage determination for 6 months.

(2) *LCD reviews involving joint complaints.* If the ALJ receives a notice from an aggrieved party who is named in a joint complaint announcing the intent to withdraw a complaint regarding an LCD before the date the ALJ issued an administrative decision regarding that LCD, the ALJ issues an administrative decision dismissing only that aggrieved party from the complaint under § 426.444. The ALJ continues the LCD review if there is one or more aggrieved party who does not withdraw from the joint complaint.

(3) *Consolidated LCD reviews.* If the ALJ receives a notice from an aggrieved party who is part of a consolidated LCD review announcing the intent to withdraw a complaint regarding an LCD before the date the ALJ issued an administrative decision regarding that LCD, the ALJ removes that aggrieved party from the consolidated LCD review and issues an administrative decision dismissing that aggrieved party's complaint under § 426.444. The ALJ continues the LCD review if there is one or more aggrieved parties who does not withdraw from the joint complaint.

§ 426.425 LCD review.

(a) Opportunity for the aggrieved party to state that the contractor's LCD record is not complete, not adequate to support the validity of the LCD, or both: Upon receipt of the contractor's LCD record, the aggrieved party who submitted the complaint may file a motion alleging that the contractor's LCD record is not complete, not adequate to support the validity of the LCD, or both. This motion must be submitted to the ALJ, the contractor, or CMS, as appropriate, within 30 days (or within additional time as allowed by the ALJ) of the date the aggrieved party receives the contractor's LCD record.

(1) If an aggrieved party does not file a motion alleging that the contractor's LCD record is incomplete or lacks adequate information to support the validity of the LCD, then the ALJ makes a determination whether the LCD record is complete and adequate, as described in § 426.430(a).

(2) If an aggrieved party files a motion alleging that the contractor's LCD record is not complete, not adequate to support the validity of the LCD, or both, based on clinical and scientific evidence contained in the LCD record, then the ALJ makes a determination whether the LCD record is complete and adequate, as described in § 426.430(b).

(3) If an aggrieved party files a motion alleging that the contractor's LCD record is not complete, not adequate to support the validity of the LCD, or both, based on new evidence, then the ALJ stays the proceeding upon request by the contractor or CMS as described in § 426.340.

(b) The aggrieved party may file a petition with the ALJ requesting additional time to review the contractor's LCD record. This petition must be submitted to the ALJ within 30 days of the receipt of the LCD record (or within additional time as allowed by the ALJ). This petition shall be in writing, shall state the reason(s) why the request for extension is being made, and the amount of additional time needed to review the contractor's LCD record. The ALJ may extend the time for reviewing the contractor's LCD case file by an aggrieved party for a reasonable period of time.

§ 426.429 Review following supplemental record.

(a) *Opportunity for the aggrieved party to review the supplemental LCD record.* Upon receipt of the contractor's supplemental LCD record, following a reconsideration under § 426.340, the aggrieved party who submitted the complaint may file a motion alleging that the contractor's LCD record is not complete, not adequate to support the validity of the LCD, or both. This motion must be submitted to the ALJ, the contractor, and CMS within 30 days (or within additional time as allowed by the ALJ) of the date the aggrieved party receives the supplemental LCD record.

(1) If an aggrieved party does not file a motion alleging that the contractor's supplemental LCD record is incomplete or lacks adequate information to support the validity of the LCD, then the ALJ makes a determination whether the LCD record is complete and adequate, as described in § 426.430(a).

(2) If an aggrieved party files a motion alleging that the contractor's LCD record is not complete, not adequate to support the validity of the LCD, or both, based on clinical and scientific evidence contained in the LCD record, then the ALJ makes a determination whether the LCD record is complete and adequate, as described in § 426.430(b).

(3) If an aggrieved party files a motion alleging that the contractor's supplemental LCD record is not complete, not adequate to support the validity of the LCD, or both, based on new evidence, then the ALJ stays the proceeding upon request by the contractor or CMS as described in § 426.340.

(b) *Request for additional time to review the contractor's supplemental LCD record by the aggrieved party.* The aggrieved party may file a petition with the ALJ requesting additional time to review the contractor's supplemental LCD record. This petition must be submitted to the ALJ within 30 days of the filing of the supplemental record (or within additional time as allowed by the ALJ). Such petition shall be in writing, shall state the reason(s) why the request

for extension is being made, and the amount of time needed to review the contractor's supplemental LCD record. The ALJ may extend the time for reviewing the contractor's supplemental LCD record for a reasonable period of time

§ 426.430 ALJ's role in determining whether the contractor's LCD record is complete and adequate to support the validity of the LCD.

(a) If the aggrieved party does not file a motion described in § 426.425(a) or § 426.429(a), the ALJ reviews the contractor's LCD record and applies the reasonableness standard, as described in § 426.431.

(b) If the aggrieved party files a motion described in § 426.425(a) or § 426.429(a), the ALJ must do the following:

(1) Allow the contractor or CMS to submit a statement to the ALJ and the aggrieved party responding to the motion described in paragraph (a) of this section. This statement must be submitted within 30 days (or within additional time as allowed by the ALJ) of the date the contractor receives the statement from the aggrieved party described in paragraph (a) of this section.

(2) Review the contents of the LCD record, as described in § 426.418.

(3) Hold conferences, if necessary, which may be conducted (at the ALJ's discretion) either in person, or, by mutual agreement of the parties, by telephone, picture-tel, or any other means agreed upon by all parties involved.

(4) Determine whether the contractor's LCD record is complete and adequate to support the validity of the LCD.

(c) ALJ's determination of the completeness of the contractor's LCD record, and the determination of contractor's LCD record's adequacy to support the validity of the LCD:

(1) *ALJ determination that the contractor's LCD record is complete and adequate to support the validity of the LCD.* If the ALJ determines that the contractor's LCD record is complete and adequate to support the validity of the LCD, the ALJ does the following:

(i) Sends a letter to the aggrieved party, the contractor, and CMS stating that the ALJ finds the contractor's LCD record to be complete and adequate to support the validity of the LCD.

(ii) Reviews the provision(s) of the LCD listed in the complaint based on the reasonableness standard as described in § 426.431.

(2) *ALJ determination that the contractor's LCD record is not complete, not adequate to support the validity of the LCD, or both.* If the ALJ determines that the contractor's LCD record is not complete, not adequate to support the validity of the LCD, or both, the ALJ does the following:

(i) Sends a letter to the aggrieved party, the contractor, and CMS (if applicable) stating that the contractor's LCD record is not complete, not adequate to support the validity of the LCD, or both.

(ii) Allows discovery as described in § 426.432.

(iii) Upon admission of new evidence, follows the process for review of new evidence as described in § 426.340.

(iv) Reviews the provision(s) of the LCD listed in the complaint to apply the reasonableness standard as described in § 426.431.

§ 426.431 ALJ's review of the LCD to apply the reasonableness standard.

(a) *Required steps.* An ALJ must do the following to review the provision(s) listed in the aggrieved party's complaint based on the reasonableness standard:

(1) Confine the LCD review to the provision(s) of the LCD raised in the aggrieved party's complaint filed with the OHA, and to clinical or scientific evidence that is contained in the LCD record (or supplemental record).

(2) Close the LCD review record to the taking of evidence.

(3) Issue an administrative decision as described in § 426.447.

(b) *Optional steps.* The ALJ may do the following to apply the reasonableness standard to the provision(s) listed in the aggrieved party's complaint:

(1) Conduct a hearing, and allow subpoenas as described in § 426.435 and the taking of evidence as described in § 426.440.

(2) At a hearing, consult with appropriate scientific or clinical experts concerning clinical or scientific evidence.

(3) Consider any previous ALJ administrative decision made under § 426.447 regarding the same provision(s) of the LCD under review.

(4) Consider any previous Board administrative decision made under § 426.482 regarding the same provision(s) of the LCD under review.

(c) *Authority for ALJs in LCD reviews when applying the reasonableness standard.* In applying the reasonableness standard to a provision (or provisions) of an LCD, the ALJ must follow the applicable provisions of the following:

(1) The Social Security Act.

(2) CMS regulations.

(3) CMS rulings.

(4) NCDs.

§ 426.432 Discovery.

(a) *General rules.* If the ALJ orders discovery, the ALJ does the following:

(1) Establishes a reasonable timeframe for discovery.

(2) Ensures that a party to the LCD review who receives a discovery request has certain rights that include, but are not limited to, the following:

(i) The right to select and use an attorney or other representative during the discovery process.

(ii) The right to submit discovery responses, objections, motions, or other pertinent materials to the ALJ.

(3) Ensures that a nonparty to the LCD review who receives a discovery request has the same rights in responding to a discovery request as any party.

(b) *Protective orders*—(1) *Request for a protective order.* Any party or nonparty receiving a discovery request may file a motion for a protective order before the date of production of the discovery.

(2) *The ALJ granting of a protective order.* The ALJ may grant a motion for a protective order if (s)he finds that the discovery sought—

(i) Is irrelevant;

(ii) Is unduly costly or burdensome;

(iii) Will unduly delay the proceeding;

(iv) Is privileged under Federal law; or

(v) Is proprietary data.

(c) *Types of discovery available.* A party may make a request to another party or nonparty for production of documents relating to a specific LCD.

(d) *Types of documents.* For the purpose of this section, the term ''documents'' includes relevant information, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained in this section will be interpreted to require the creation of a document.

(e) *Types of discovery not available.* Requests for admissions, depositions, written interrogatories, or any other forms of discovery, other than those permitted under paragraph (d) of this section, are not authorized.

(f) *Privileged documents*—(1) *Options for the ALJ.* The ALJ may, in appropriate circumstances, do any of the following:

(i) Order CMS to provide an index of any documents withheld on the basis of privilege and to state the basis for the privilege claim.

(ii) Conduct an in-camera review of any documents withheld on the basis of privilege.

(2) *Confidentiality.* If the ALJ orders the release of any document when

privilege was asserted, the ALJ must order that all names or identifying information that is not relevant to the specific LCD be redacted from the document.

§ 426.435 Subpoenas.

(a) *Purpose of a subpoena.* A subpoena requires the attendance of an individual at a hearing and may also require the individual (whether or not the individual is a party) to produce evidence authorized under § 426.440 at or before the hearing.

(b) *Filing a motion for a subpoena.* A party seeking a subpoena must file a written motion with the ALJ not less than 30 days before the date fixed for the hearing. The motion must do all of the following:

(1) Designate the witnesses.

(2) Specify any evidence to be produced.

(3) Describe the address and location with sufficient particularity to permit the witnesses to be found.

(4) State the pertinent facts that the party expects to establish by the witnesses or documents and whether the facts could be established by other evidence without the use of a subpoena.

(c) *Response to a motion for a subpoena.* Within 15 days after the written motion requesting issuance of a subpoena is served on all parties, any party may file an opposition to the motion or other response.

(d) *Extension for good cause.* The ALJ may modify the deadlines specified in paragraphs (b) and (c) of this section for good cause.

(e) *Motion for a subpoena granted.* If the ALJ grants a motion requesting issuance of a subpoena, the subpoena must do the following:

(1) Be issued in the name of the ALJ.

(2) Include the docket number and title of the LCD under review.

(3) Provide notice that the subpoena is issued according to sections 1872 and 205(d) and (e) of the Act.

(4) Specify the time and place at which the witness is to appear and any evidence the witness is to produce.

(f) *Delivery of the subpoena.* The party seeking the subpoena will serve it by personal delivery to the individual named, or by certified mail return receipt requested, addressed to the individual at his or her last dwelling place or principal place of business.

(g) *Motion to quash a subpoena.* The individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within 10 days after service.

(h) *Refusal to obey a subpoena.* The exclusive remedy for contumacy by, or refusal to obey a subpoena duly served upon, any person is specified in section 205(e) of the Act (42 U.S.C. 405(e)).

§ 426.440 Evidence.

(a) The ALJ determines the admissibility of evidence consistent with § 426.340.(b) Except as provided in this part, the ALJ is not bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence when appropriate, for example, to exclude unreliable evidence.

(b) The ALJ must exclude evidence that (s)he determines is clearly irrelevant or immaterial.

(c) Although relevant, the ALJ must exclude evidence if the ALJ determines it is privileged under Federal law.

(d) Consistent with § 426.340, the ALJ may permit the parties to introduce the testimony of scientific and clinical experts, rebuttal witnesses, and other relevant evidence, only if the testimony is related to evidence that was considered in the LCD. This testimony may be submitted in the form of a written report, accompanied by the curriculum vitae of the expert preparing the report.

(e) Experts submitting reports must be available for cross-examination at an evidentiary hearing upon request of the ALJ or a party to the proceeding, or the reports will be excluded from the record.

(f) All documents and other evidence offered or taken for the record will be open to examination by all parties, unless otherwise ordered by the ALJ for good cause shown.

§ 426.441 Closing discovery.

Upon completion of discovery, the ALJ will notify all parties in writing that the discovery period is closed.

§ 426.444 Dismissals for cause.

(a) The ALJ may, at the request of any party, or on his or her own motion, dismiss a complaint if the aggrieved party (or his or her representative) fails to do either of the following:

(1) Attend or participate in a prehearing conference or hearing without good cause.

(2) Comply with a lawful order of the ALJ.

(b) The ALJ must dismiss any provision(s) of a complaint in any of the following circumstances:

(1) The ALJ does not have the authority to rule on that provision under § 426.405(d).

(2) The complaint is not timely. (See § 426.400(b).)

(3) The complaint is not filed by an aggrieved party, or is filed by an individual who is unable to demonstrate that he or she is in need of a particular service. (See § 426.400.)

(4) The aggrieved party no longer needs the service because the aggrieved party has received the service before the aggrieved party filed the complaint with the OHA. Except for an individual who has a continuing need for a particular item or service that is subject to an LCD.

(5) The complaint challenges a provision or provisions of an NCD. (See § 426.405.)

(6) The contractor notifies the ALJ that they have retired the LCD. (See § 426.420.)

(7) The aggrieved party withdraws the complaint. (See § 426.423.)

(8) The aggrieved party is deceased.

(9) Nothing in the preceding list of circumstances leading to automatic dismissal shall be construed as having any force and effect concerning the legal rights of representatives of a deceased beneficiary to properly pursue settlement of a claim.

(c) The ALJ may, at the request of any party, or on his or her own motion, dismiss a complaint if an ALJ has already issued an administrative decision on the LCD or provisions of an LCD and the aggrieved party has not presented any new clinical or scientific evidence that supports the complaint.

§ 426.445 Witness fees.

(a) A witness testifying at a hearing before an ALJ receives the same fees and mileage as witnesses in Federal district courts of the United States. If the witness is an expert, he or she will be entitled to an expert witness fee. Witness fees will be paid by the party seeking to present the witness.

(b) If an ALJ requests expert testimony, the OHA is responsible for paying all applicable fees and mileage.

§ 426.446 Record of hearing.

The ALJ must ensure that all hearings are open to the public and must be mechanically or stenographically reported. All evidence upon which the ALJ relies for decision must be contained in the record, either directly or by appropriate reference. All medical reports, exhibits, and any other pertinent document or record, either in whole or in material part, introduced as evidence, must be marked for identification and incorporated into the record.

§ 426.447 Issuance and notification of an ALJ's administrative decision.

An ALJ must issue to all parties to the LCD review, within 90 days of closing the LCD review record to the taking of evidence, one of the following:

(a) A written administrative decision, including a description of appeal rights.

(b) A written notification stating that an administrative decision is pending, and an approximate date of issuance for the administrative decision.

§ 426.450 Mandatory provisions of an ALJ's administrative decision.

(a) *Finding.* An ALJ's administrative decision must include one of the following:

(1) A determination that the provision of the LCD is valid under the reasonableness standard.

(2) A determination that the provision of the LCD is not valid under the reasonableness standard.

(3) A statement dismissing the complaint regarding the LCD and a rationale for the dismissal.

(b) *Other information.* An ALJ's administrative decision must include all of the following:

(1) The date of issuance.

(2) The docket number of the LCD review.

(3) The names of the parties to the LCD review.

(4) A statement as to whether the aggrieved party has filed a claim for the service(s) named in the complaint, the date(s)-of-service, and the disposition, if known.

(5) A rationale for the basis of the ALJ's administrative decision, including the following:

(i) Findings of fact.

(ii) Interpretations of law.

(iii) Applications of fact to law.

(6) A summary of the evidence reviewed.

(7) A statement regarding appeal rights.

(8) The signature of the ALJ.

§ 426.455 Prohibited provisions of an ALJ's administrative decision.

An ALJ's administrative decision must not do any of the following:

(a) Order CMS or its contractors to modify (including adding to or deleting from) a provision or provisions of an LCD.

(b) Order CMS or its contractors to pay a specific claim.

(c) Establish a time limit for the establishment of a new or revised LCD.

(d) Review, evaluate, or address an LCD other than the LCD under review.

(e) Include a requirement for CMS or its contractors that specifies payment, coding, or systems changes for an LCD, or deadlines for implementing these types of changes.

(f) Order or address how a contractor(s) should implement an LCD.

§ 426.460 Effect of an ALJ's administrative decision.

(a) *Valid under the reasonableness standard.* If the ALJ finds that the provision or provisions of the LCD named in the complaint is (are) valid under the reasonableness standard, the aggrieved party or parties may appeal that (those) part(s) of the administrative decision to the Board under § 426.465.

(b) *Not valid under the reasonableness standard.* If the ALJ finds that the provision or provisions of the LCD named in the complaint is (are) invalid under the reasonableness standard, and no appeal is filed by the contractor or CMS under § 426.465(b) then CMS will instruct its contractor, the M+C plan, or other Medicare managed care plan to provide the following relief.

(1) *Individual claim relief when a claim is pending or has been previously adjudicated.* If an aggrieved party's claim/appeal(s) had previously been denied, the contractor, an M+C plan or another Medicare managed care plan must reopen the aggrieved party's claim and adjudicate the claim without using the provision(s) of the LCD that the ALJ found invalid.

(2) *Individual claim relief when no claim is pending.* If a revised LCD is issued, the contractor, the M+C plan, and any other Medicare managed care plan within contractor's jurisdiction will use the revised LCD in reviewing claim/appeal submissions or request for services for items delivered or services performed on or after the effective date.

(3) *Coverage determination relief.* If no appeal is filed by the contractor of CMS under § 426.425(b), within 30 days of the issuance of the ALJ's administrative decision, the contractor or CMS must send a letter to the ALJ and the aggrieved party or parties named in the complaint announcing the intent to do one of the following:

(i) Retire the LCD in its entirety, or retire the provision or provisions of the LCD that the ALJ's administrative decision stated was (were) not valid under the reasonableness standard.

(ii) Conduct a reconsideration using the information collected during the LCD review, as well as any other applicable information, and do one of the following:

(A) Supplement the LCD record or rationale, and reaffirm the LCD.

(B) Revise the LCD.

(C) Retire the LCD.

(iii) Unless retired under paragraph (b)(3)(i), or (b)(3)(ii)(C) of this section, the contractor may continue to use the LCD in adjudicating claims for individuals who did not challenge the LCD while a reconsideration is pending.

§ 426.462 Notice of an ALJ's administrative decision.

After the ALJ has made a decision regarding an LCD complaint, the ALJ sends a written notice of the administrative decision to each party. The notice must—

(a) Contain a finding with respect to the LCD complaint, and

(b) Inform each party to the determination of his or her rights to seek further review if he or she is dissatisfied with the determination, and the time limit under which an appeal must be requested.

§ 426.465 Appealing part or all of an ALJ's administrative decision.

(a) *Circumstance under which an aggrieved party may appeal part or all of an ALJ's administrative decision.* An aggrieved party (including one or more aggrieved parties named in a joint complaint and an aggrieved party who is part of a consolidated LCD review) may appeal to the Board any part of an ALJ's administrative decision that does the following:

(1) States that a provision of an LCD is valid under the reasonableness standard.

(2) Dismisses a complaint regarding an LCD (except as prohibited in paragraph (b) of this section).

(b) *Circumstance under which a contractor or CMS may appeal part or all of an ALJ's administrative decision.* A contractor or CMS may appeal to the Board any part of an ALJ's administrative decision that states that a provision (or provisions) of an LCD is (are) unreasonable.

(c) *Stay of an implementation pending appeal.*

(1) If an ALJ's administrative decision finds a provision or provisions of an LCD unreasonable, an appeal by a contractor or CMS stays implementation of the ALJ's administrative decision until a final decision is issued by the Board.

(2) The appeal request must be submitted to the Board in accordance with paragraph (e) of this section.

(d) *Circumstance under which an ALJ's administrative decision cannot be appealed.* An ALJ's administrative order dismissing a complaint is not subject to appeal in either of the following circumstances:

(1) The contractor retires the LCD under review.

(2) The aggrieved party who filed the complaint withdraws the complaint.

(e) *Receipt of the appeal by the Board.* Unless there is good cause, an appeal described in paragraphs (a) or (b) of this section must be received by the Board within 60 calendar days of the date the

ALJ's administrative decision was issued. If the 60th calendar day falls on a Saturday, Sunday, or Federal holiday, the Board must receive the appeal by the next business day.

(f) *Filing an appeal.* (1) To file an appeal described in paragraph (a) of this section, an aggrieved party, a contractor, or CMS must send the following to the Board at: The Department of Health and Human Services, Department Appeals Board, Room 637D, Humphrey Building, Attention: NCD Complaint, 200 Independence Avenue, SW., Washington, DC 20201:

(i) The full names and addresses of the parties and participants named in the ALJ's administrative decision, including the name of the LCD.

(ii) The date of issuance of the ALJ's administrative decision.

(iii) The docket number that appears on the ALJ's administrative decision.

(iv) A statement identifying the part(s) of the ALJ's administrative decision that are being appealed.

(2) If an appeal described in paragraph (a) of this section is not received by the Board by the date described in paragraph (c) of this section, it must include a rationale stating why the late appeal should be accepted by the Board.

(3) An appeal described in paragraph (a) of this section may include a statement explaining why the ALJ's decision should be reversed.

§ 426.467 Board's LCD review record.

(a) *Elements of the Board's LCD review record.* Except as provided in paragraph (b) of this section, the Board's LCD review record consists of any document or material that the Board compiled or considered during an LCD review, including, but not limited to, the following:

(1) The LCD complaint.

(2) The LCD and LCD record.

(3) The supplemental LCD record, if applicable.

(4) The Board's administrative decision.

(5) Transcripts of record.

(6) Any other relevant evidence gathered under § 426.440.

(b) *Documents excluded from the contractor/CMS' LCD record.* The LCD record does not include material that is privileged or otherwise prohibited from release by Federal law.

§ 426.468 Decision to not appeal an ALJ's administrative decision.

(a) Failure to timely appeal without good cause waives the right to challenge any part(s) of the ALJ's administrative decision under § 426.665.

(b) Unless the Board finds good cause for late filing, an untimely appeal will be dismissed.

(c) If a party does not submit a timely appeal to any part(s) of the ALJ's administrative decision on an LCD review to the Board, as provided in this subpart, then the ALJ's administrative decision is final and not subject to any further review.

§ 426.470 Board's role in docketing and evaluating the acceptability of appeals of ALJ administrative decisions.

(a) *Docketing the appeal.* The Board does the following upon receiving an appeal of part or all of an ALJ's administrative decision:

(1) Dockets the appeal either separately or with similar appeals (see paragraph (e) of this section).

(2) Assigns a docket number.

(b) *Evaluating the acceptability of the appeal.* The Board determines if the appeal is acceptable by confirming that the appeal meets all of the criteria in § 426.465.

(c) *Unacceptable appeal.* If the Board determines that an appeal is unacceptable, the Board must issue an administrative decision dismissing the appeal.

(d) *Acceptable appeal.* If the Board determines that an appeal is acceptable, the Board does the following:

(1) Sends a letter to the appellant to acknowledge that the appeal is acceptable, and informing them of the docket number.

(2) Forwards a copy of the appeal and the letter described in paragraph (d)(1) of this section to all parties involved in the appeal.

(3) Requests that the ALJ send a copy of the LCD review record to the Board and all parties involved in the appeal.

§ 426.472 ALJ's role in making the LCD review record available.

Upon a request from the Board, the ALJ must provide to the Board, and all parties to the review of the ALJ's administrative decision, a copy of the ALJ's LCD review record (as described in § 426.474).

§ 426.474 ALJ's LCD review record.

(a) *Elements of the ALJ's LCD review record.* Except as provided in paragraph (b) of this section, the ALJ's LCD review record consists of any document or material that the ALJ compiled or considered during the LCD review, including, but not limited to, the following:

(1) The LCD complaint.

(2) The LCD and LCD record.

(3) The supplemental LCD record, if applicable.

(4) The ALJ's administrative decision.

(5) Transcripts of record.

(6) Any other relevant evidence gathered under § 426.440.

(b) *Documents excluded from the contractor's LCD record.* The LCD record does not include material that is privileged or otherwise prohibited from release by Federal law.

§ 426.476 Board review of an ALJ's administrative decision.

(a) *Mandatory steps.* If the Board determines that an appeal meets the requirements of § 426.465, the Board must do the following:

(1) Allow the aggrieved party, the contractor or CMS to submit a statement to the Board and the appellant in response to the appeal.

(2) Review the entire LCD review record, or the portion of the LCD review record at issue.

(3) Issue an administrative decision, as described in § 426.482, based on one, or both, of the following standards:

(i) *Disputed issue of fact.* If the appeal of the ALJ's administrative decision is based on a disputed issue of fact, the Board determines whether the ALJ's administrative decision is supported by substantial evidence on the whole LCD review record.

(ii) *Disputed issue of law.* If the appeal of the ALJ's administrative decision is based on a disputed issue of law, the Board determines whether the ALJ's administrative decision is erroneous.

(b) *Prohibited steps.* The Board must not do any of the following:

(1) Consider any issue not raised in the parties' briefs.

(2) Consider any evidence that is not part of the LCD review record.

(c) *Authority for Board in reviewing ALJ administrative decisions.* In determining whether an ALJ's administrative decision should be upheld or overturned, the Board must follow the applicable provisions of the following:

(1) The Social Security Act.

(2) CMS regulations.

(3) CMS rulings.

(4) NCDs.

(d) *Dismissal of ALJ's administrative decision.* The Board must dismiss the appeal of an ALJ's administrative decision if the contractor notifies the Board that it has retired the LCD.

§ 426.478 Retiring an LCD during the Board's review of an ALJ's administrative decision.

A contractor may retire an LCD during the Board's review of an ALJ's administrative decision. If an LCD is retired, the aggrieved party is entitled to individual claim relief provided at § 426.488(b).

§ 426.480 Withdrawing an appeal of an ALJ's administrative decision.

(a) *Withdrawal of an appeal of an ALJ's administrative decision.* A party who filed an appeal of an ALJ's administrative decision may withdraw the appeal before the Board issues an administrative decision regarding the ALJ's administrative decision.

(b) *Process withdrawing an appeal of an ALJ's administrative decision.* To withdraw an appeal of an ALJ's administrative decision, the party who filed the appeal must send a written notice announcing the intent to withdraw to the Board (see § 426.465), and any other party.

(c) *Actions the Board must take upon receiving a notice announcing the intent to withdraw an appeal of an ALJ's administrative decision*—(1) *Appeals involving one aggrieved party, or initiated by CMS or a contractor.* If the Board receives a notice announcing the intent to withdraw an appeal of an ALJ's administrative decision before the date the Board has issued its administrative decision, the Board must issue an administrative decision dismissing the appeal under § 426.484.

(2) *Appeals involving joint complaints.* If the Board receives a notice announcing the intent to withdraw an appeal from an aggrieved party who is named in a joint appeal before the date the Board issued its administrative decision, the Board must issue an administrative decision dismissing only that aggrieved party from the appeal under § 426.482. The Board must continue its review of the ALJ's administrative decision for the remaining aggrieved party or parties who have not withdrawn their appeal.

§ 426.482 Issuance and notification of a Board administrative decision.

The Board must issue a written administrative decision, including a description of appeal rights, to all parties to the review of the ALJ administrative decision.

§ 426.484 Mandatory provisions of a Board administrative decision.

(a) *Finding.* A Board administrative decision must include at least one of the following:

(1) A statement upholding the part(s) of the ALJ administrative decision named in the appeal.

(2) A statement reversing the part(s) of the ALJ administrative decision named in the appeal.

(3) A statement dismissing the appeal of an ALJ administrative decision and a rationale for the dismissal.

(b) *Other information.* A Board administrative decision must include all of the following:

(1) The date of issuance.

(2) The docket number of the review of the ALJ administrative decision.

(3) The names of the parties to the review of the ALJ administrative decision.

(4) A summary of the ALJ's administrative decision.

(5) A rationale for the basis of the Board's administrative decision including the following:

(i) Findings of fact.

(ii) Interpretations of law.

(iii) Application of fact to law.

(6) The signature of a Board member.

§ 426.486 Prohibited provisions of a Board administrative decision.

A Board administrative decision must not do any of the following:

(a) Order CMS or its contractors to take specific actions in modifying (including adding to or deleting from) a provision or provisions of an LCD.

(b) Order CMS or its contractors to pay a specific claim.

(c) Establish a time limit for the establishment of a new or revised LCD.

(d) Review or evaluate an LCD other than the LCD named in the ALJ's administrative decision.

(e) Include a requirement for CMS or its contractors that specifies payment, coding, or system changes for an LCD or deadlines for implementing these changes.

(f) Order CMS or its contractors to implement an LCD in a particular manner.

§ 426.488 Effect of a Board administrative decision.

(a) *The Board's administrative decision upholds an ALJ determination that an LCD is valid or reverses an ALJ determination that an LCD is invalid.* If the Board's administrative decision upholds the ALJ determination that an LCD is valid under the reasonableness standard or reverses an ALJ determination that than LCD is invalid, the contractor or CMS is not required to take any action.

(b) *The Board's administrative decision upholds an ALJ determination that the LCD is invalid.* If the Board's administrative decision upholds an ALJ determination that the LCD is invalid, CMS will instruct its contractor, the M+C plan, or other Medicare managed care plan to provide individual claim relief.

(1) *Individual claim relief when a claim is pending or has been previously adjudicated.* If an aggrieved party's claim/appeal(s) had previously been denied, the contractor, an M+C plan, or another Medicare managed care plan must reopen the aggrieved party's claim and adjudicate the claim without using the provision(s) of the LCD that the ALJ found invalid.

(2) *Individual claim relief when no claim is pending.* If a revised LCD is issued, the contractor, the M+C plan, and any other Medicare managed care plan within contractor's jurisdiction will use the revised LCD in reviewing claim or appeal submissions or request for services for items delivered or services performed on or after the effective date.

(3) *Coverage determination relief.* Within 30 days of the issuance of the Board's administrative decision, the contractor or CMS must send a letter to the Board and the aggrieved party or parties named in the complaint announcing the intent to do one of the following:

(i) Retire the LCD in its entirety, or retire the provision or provisions of the LCD found to be invalid under the reasonableness standard.

(ii) Conduct a reconsideration using the information collected during the LCD review, as well as any other applicable information, and do one of the following:

(A) Supplement the LCD record or rationale, and reaffirm the LCD.

(B) Revise the LCD.

(C) Retire the LCD.

(iii) The contractor may continue to use the LCD in adjudicating claims for individuals who did not challenge the LCD while a reconsideration is pending.

(c) *The Board's administrative decision reverses a dismissal.* If the Board's administrative decision reverses an ALJ's administrative decision dismissing a complaint, the LCD review is remanded to the ALJ and the LCD review continues.

§ 426.489 Board remand authority.

(a) *When the Board may remand a case.* The Board may remand a case to an ALJ, if the ALJ's administrative decision—

(1) Does not comply with § 426.340, § 426.405, § 426.450, § 426.455, or § 426.474; or,

(2) Does not include the following:

(i) Findings of fact.

(ii) Interpretations of law.

(iii) Applications of fact to law.

(iv) Summary of the evidence reviewed.

(v) The signature of the ALJ.

(b) *When the Board may not remand a case.* The Board may not remand a case to an ALJ to review new or additional evidence submitted during the Board review of an LCD complaint.

(c) *Notice when case is remanded to the OHA.* If the Board remands a case to the OHA, the Board will—

(1) Notify each aggrieved party at his or her last known address, the contractor and CMS of the Board's remand decision; and

(2) Explain why the case is being remanded and the specific actions ordered by the Board.

(d) *Action by an ALJ on remand.* An ALJ will take any action that is ordered by the Board and may take any additional action that is not inconsistent with the Board's remand order.

§ 426.490 Board administrative decision.

A decision by the Board constitutes a final agency action and is subject to judicial review. Neither the contractor nor CMS may appeal a Board administrative decision.

Subpart E—Review of an NCD

§ 426.500 Procedure for filing an acceptable complaint to a provision or provisions of an NCD.

(a) *The complaint.* An aggrieved party may initiate a review of an NCD by filing a written complaint with the Department of Health and Human Services, Departmental Appeals Board, Room 637D, Humphrey Building, Attention: NCD Complaint, 200 Independence Avenue, SW., Washington, DC 20201.

(b) *Timeliness of a complaint.* The Board must receive a complaint within 6 months of the written statement described in paragraph (c)(1)(vi) of this section.

(c) *Components of a valid complaint.* A complaint must contain the following information:

(1) Beneficiary-identifying information:

(i) Beneficiary's name.

(ii) Beneficiary's mailing address.

(iii) Beneficiary's State of residence, if different from mailing address.

(iv) Beneficiary's telephone number.

(v) Beneficiary's Health Insurance Claim number.

(vi) A copy of the treating physician's certification that, in his or her medical opinion, the beneficiary needs the service that is the subject of the NCD.

(vii) A statement from the treating physician that Medicare coverage for the service needed is likely to be denied under the applicable NCD.

(2) *NCD-identifying information:*

(i) Title of final NCD being challenged.

(ii) The specific provision or provisions of the NCD adversely affecting the aggrieved party.

(3) *Aggrieved party statement.* A statement from the aggrieved party explaining the rationale for the allegation that the provision(s) of the NCD is (are) not valid under the reasonableness standard, and whether the aggrieved party has received the service related to the NCD.

(4) *Clinical or scientific evidence.* Copies of clinical or scientific evidence that supports the complaint.

(d) *Joint complaints*—(1) *Conditions for a joint complaint.* Two or more aggrieved parties may initiate the review of an NCD by filing a single written complaint with the Board if all of the following conditions are met:

(i) Each aggrieved party named in the joint complaint has a similar medical condition.

(ii) Each aggrieved party named in the joint complaint is filing the complaint in regard to the same provision(s) of the same NCD.

(2) *Components of a valid joint complaint.* A joint complaint must contain the following information:

(i) The beneficiary-identifying information described in paragraph (c)(1) of this section for each aggrieved party named in the joint complaint.

(ii) The NCD-identifying information described in paragraph (c)(2) of this section.

(iii) The documentation described in paragraphs (c)(3) and (c)(4) of this section.

(3) *Timeliness of a joint complaint.* The Board must receive a joint complaint within 6 months of the date of the documentation from each aggrieved party's treating physician expressing the belief that payment for the needed service is likely to be denied under the NCD in question.

§ 426.505 Authority of the Board.

(a) The Board conducts a fair and impartial hearing, avoids unnecessary delay, maintains order, and ensures that all proceedings are recorded.

(b) The Board defers only to reasonable findings of fact, reasonable interpretations of law, and reasonable applications of fact to law by the Secretary.

(c) The Board has the authority to do any of the following:

(1) Review complaints by an aggrieved party (or aggrieved parties).

(2) Dismiss complaints that fail to comply with § 426.500.

(3) Set and change the date, time, and place of a hearing upon reasonable notice to the parties to the review.

(4) Continue or recess a hearing for a reasonable period of time.

(5) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(6) Consult with scientific and clinical experts on its own motion, concerning clinical or scientific evidence.

(7) Set schedules for submission of exhibits and written reports of experts.

(8) Administer oaths and affirmations.

(9) Examine witnesses.

(10) Issue subpoenas requiring the attendance of witnesses at hearings as permitted by this part.

(11) Issue subpoenas requiring the production of existing documents before, and relating to, the hearing as permitted by this part.

(12) Rule on motions and other procedural matters.

(13) Regulate the scope and timing of documentary discovery as permitted by this part.

(14) Regulate the course of a hearing and the conduct of representatives, parties, and witnesses.

(15) Receive, rule on, exclude, or limit evidence, in accordance with § 426.340.

(16) Take official notice of facts, upon motion of a party.

(17) Decide cases, upon the motion of a party, by summary judgment when there is no disputed issue of material fact.

(18) Conduct any conference, argument, or hearing in person or, upon agreement of the parties, by telephone, picture-tel, or any other means.

(19) Issue administrative decisions, including remand orders.

(20) Exclude a party to an NCD review (or a party's representative) for failure to comply with a Board order or procedural request without good cause.

(d) The Board does not have authority to do any of the following under this part:

(1) Conduct an NCD review or conduct NCD hearings, except as provided by § 426.465.

(2) Conduct an NCD review or conduct NCD hearings on its own motion or on the motion of a nonaggrieved party.

(3) Receive or accept any new evidence without following § 426.340.

(4) Review any decisions by CMS to develop a new or revised NCD.

(5) Conduct a review of any draft NCDs or coverage decision memoranda.

(6) Conduct a review of the merits of an invalid NCD complaint.

(7) Conduct an NCD review of any policy that is not an NCD, as defined in § 400.202 of this chapter.

(8) Compel mediation or settlement negotiations by aggrieved parties.

(9) Deny a request for withdrawal of a complaint by an aggrieved party.

(10) Compel CMS to conduct studies, surveys, or develop new information to support an NCD record.

(11) Deny CMS the right to repeal an NCD.

(12) Subject to the timely filing requirements, deny an aggrieved party,

CMS, or its contractor the right to appeal an ALJ administrative decision.

(13) Deny CMS the right to conduct an NCD reconsideration review when any party submits new evidence.

(14) Make a determination under § 426.541 before a CMS reconsideration review of new evidence as described in § 426.340.

(15) Find invalid applicable Federal statutes, regulations, or ruling (other than a ruling that meets the definition of an NCD in § 400.202 of this chapter).

(16) Enter an administrative decision defining the specific terms of a subsequent NCD.

§ 426.506 Ex parte contacts

No party or person (except employees of the Board's office) will communicate in any way with the Board on any substantive matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 426.510 Board's role in docketing and evaluating the acceptability of NCD complaints.

(a) *Docketing the complaint.* The Board must docket a complaint when it receives a complaint regarding an NCD.

(b) *Evaluating the acceptability of the complaint.* The Board determines if the complaint is acceptable by confirming all of the following:

(1) The complaint is being submitted by an aggrieved party or, in the case of a joint complaint, that each individual named in the joint complaint is an aggrieved party. (In determining if a complaint is acceptable, the Board will assume that the facts alleged by the treating physician's statement regarding the aggrieved party's (or parties') clinical condition are true.)

(2) The complaint meets the requirements for a valid complaint in § 426.500 and is not one of the documents in § 426.320(b).

(c) *Unacceptable complaint.*

(1) If the Board determines that the complaint is unacceptable, the Board must provide the aggrieved party (or parties) one opportunity to amend the unacceptable complaint.

(2) If the aggrieved party (or parties) fail(s) to submit an acceptable amended complaint within a reasonable timeframe as determined by the Board, the Board must issue an administrative decision dismissing the unacceptable complaint.

(d) *Acceptable complaint.* If the Board determines that the complaint (or amended complaint) is acceptable, the Board does the following:

(1) Sends a letter to the aggrieved party (or parties) acknowledging the complaint and informing the aggrieved party (or parties) of the docket number.

(2) Forwards a copy of the complaint and the letter described in paragraph (d)(1) of this section to CMS.

(3) Requests that CMS send a copy of the NCD record to the Board and all parties to the NCD review.

(e) *Consolidation of complaints regarding an NCD*—(1) *Criteria for consolidation.* If two or more aggrieved parties submit separate acceptable complaints to the same provision(s) of the same NCD, the Board may, upon its own motion or by motion of any party to the NCD review, consolidate the complaints and conduct a consolidated NCD review if all of the following criteria are met:

(i) The complaints are in regard to the same provision(s) of the same NCD.

(ii) The complaints contain common questions of law, common questions of fact, or both.

(2) *Decision to consolidate complaints.* If the Board decides to consolidate complaints, the Board does the following:

(i) Provides notification that the NCD review will be consolidated and informing all parties of the new docket number.

(ii) Makes a single record of the proceeding.

(iii) Considers the relevant evidence introduced in each NCD challenge as introduced in the consolidated review.

(3) *Decision not to consolidate complaints.* If the Board decides not to consolidate complaints, the Board conducts separate NCD reviews for each complaint.

§ 426.515 CMS's role in making the NCD record available.

CMS will provide a copy of the NCD record (as described in § 426.518) to the Board and all parties to the NCD review.

§ 426.518 NCD record.

(a) *Elements of the NCD record.* Except as provided in paragraph (b) of this section, the NCD record consists of any document or material that CMS considered during the development of the NCD, including, but not limited to, the following:

(1) The NCD being challenged.

(2) Any relevant medical evidence considered on or before the date the NCD was issued, including, but not limited to, the following:

(i) Scientific articles.

(ii) Technology assessments.

(iii) Clinical guidelines.

(iv) Records from the Food and Drug Administration regarding safety and efficacy of a drug or device except where prohibited by Federal law.

(v) Statements from clinical experts, medical textbooks, claims data, or other indication of medical standard of practice.

(3) Public comments received (comments received during the notice and comment period).

(b) *Documents excluded from the NCD record.* The NCD record does not include the following:

(1) Material that is privileged or otherwise prohibited from release by Federal law.

(2) Any new evidence.

(3) Proprietary data.

(1) § 426.520 Repealing an NCD under review.

CMS may repeal an NCD under review before the date the Board issues an administrative decision regarding that NCD. Repealing an NCD under review has the same effect as an administrative decision under § 426.560(b).

§ 426.523 Withdrawing a complaint regarding an NCD under review.

(a) *Circumstance under which an aggrieved party withdraws a complaint regarding an NCD.* An aggrieved party who filed a complaint regarding an NCD may withdraw the complaint before the Board issues an administrative decision regarding that NCD. The aggrieved party may not file another complaint to the same coverage determination for 6 months.

(b) *Process for an aggrieved party withdrawing a complaint regarding an NCD.* To withdraw a complaint regarding an NCD, the aggrieved party who filed the complaint must send a written notice announcing the intent to withdraw to the Board (see § 426.500) and CMS.

(c) *Actions the Board must take upon receiving a notice announcing the intent to withdraw a complaint regarding an NCD*—(1) *NCD reviews involving one aggrieved party.* If the Board receives a notice announcing the intent to withdraw a complaint regarding an NCD before the date the Board issued an administrative decision regarding that NCD, the Board issues an administrative decision dismissing the complaint under § 426.544 and informing the aggrieved party that he or she may not file another complaint to the same coverage determination for 6 months.

(2) *NCD reviews involving joint complaints.* If the Board receives a notice from an aggrieved party who is named in a joint complaint announcing the intent to withdraw a complaint regarding an NCD before the date the

Board issued an administrative decision regarding that NCD, the Board issues an administrative decision dismissing only that aggrieved party from the complaint under § 426.544. The Board continues the NCD review if there is one or more aggrieved party who does not withdraw from the joint complaint.

(3) *Consolidated NCD reviews.* If the Board receives a notice from an aggrieved party who is part of a consolidated NCD review announcing the intent to withdraw a complaint regarding an NCD before the date the Board issued an administrative decision regarding that NCD, the Board removes that aggrieved party from the consolidated NCD review and issues an administrative decision dismissing that aggrieved party's complaint under § 426.544. The Board continues the NCD review if there is one or more aggrieved party who does not withdraw from the joint complaint.

§ 426.525 NCD review.

(a) Opportunity for the aggrieved party to state that the NCD record is not complete, not adequate to support the validity of the NCD, or both. Upon receipt of the NCD record, the aggrieved party who submitted the complaint may file a motion alleging that the NCD record is not complete, not adequate to support the validity of the NCD, or both. This motion must be submitted to the Board and CMS within 30 days (or within additional time as allowed by the Board) of the date the aggrieved party receives the NCD record.

(1) If an aggrieved party does not file a motion alleging that the NCD record is incomplete or lacks adequate information to support the validity of the NCD, then the Board makes a determination whether the NCD record is complete and adequate, as described in § 426.530(a).

(2) If an aggrieved party files a motion alleging that the NCD record is not complete, not adequate to support the validity of the NCD, or both, based on clinical and scientific evidence contained in the NCD record, then the Board makes a determination whether the NCD record is complete and adequate, as described in § 426.530(b).

(3) If an aggrieved party files a motion alleging that the NCD record is not complete, not adequate to support the validity of the NCD, or both, based on new evidence, then the Board stays the proceeding upon request by CMS as described in § 426.340.

(b) *The aggrieved party may file a petition with the Board requesting additional time to review the NCD record.* This petition must be submitted to the Board within 30 days (or within additional time as allowed by the Board). This petition shall be in writing, will state the reason(s) why the request for extension is being made, and the amount additional of time needed to review the NCD record. The Board may extend the time for reviewing the NCD case file by an aggrieved party for a reasonable period of time.

§ 426.529 Review following supplemental record.

(a) *Opportunity for the aggrieved party to review the supplemental NCD record.* Upon receipt of the supplemental NCD record following a reconsideration under § 426.340, the aggrieved party who submitted the complaint may file a motion alleging that the NCD record is not complete, not adequate to support the validity of the NCD, or both. This motion must be submitted to the Board and CMS within 30 days (or within additional time as allowed by the Board) of the date the aggrieved party receives the supplemental NCD record.

(1) If an aggrieved party does not file a motion alleging the supplemental NCD record is incomplete or lacks adequate information to support the validity of the NCD, then the Board makes a determination whether the NCD record is complete and adequate, as described in § 426.530(a).

(2) If an aggrieved party files a motion alleging that the NCD record is not complete, not adequate to support the validity of the NCD, or both, based on clinical and scientific evidence contained in the NCD record, then the Board makes a determination whether the NCD record is complete and adequate, as described in § 426.530(b).

(3) If an aggrieved party files a motion alleging that the supplemental NCD record is not complete, not adequate to support the validity of the NCD, or both, based on new evidence, then the Board stays the proceeding upon request by CMS as described in § 426.340.

(b) *Request for additional time to review the CMS's supplemental NCD record by the aggrieved party.* The aggrieved party may file a petition with the Board requesting additional time to review CMS's supplemental NCD record. This petition must be submitted to the Board within 30 days (or within additional time as allowed by the Board). This petition shall be in writing, shall state the reason(s) why the request for extension is being made, and the amount of time needed to review the supplemental NCD record. The Board may extend the time for reviewing the supplemental NCD record for a reasonable period of time.

§ 426.530 Board's role in determining whether the NCD record is complete and adequate to support the validity of the NCD.

(a) If the aggrieved party does not file a motion described in § 426.525(a) or § 426.529(a), the Board reviews CMS's NCD record and applies the reasonableness standard, as described in § 426.531.

(b) If the aggrieved party files a motion described in § 426.525(a) or § 426.529(a), the Board must do the following:

(1) Allow the CMS to submit a statement to the Board and the aggrieved party responding to the motion described in paragraph (a) of this section. This statement must be submitted within 30 days (or within additional time as allowed by the Board) of the date CMS receives the statement from the aggrieved party described in paragraph (a) of this section.

(2) Review the contents of the NCD record, as described in § 426.518.

(3) Hold conferences, if necessary, which may be conducted (at the Board's discretion) either in person, or, by mutual agreement of the parties, by telephone, picture-tel, or any other means agreed upon by all parties involved.

(4) Determine if the NCD record is complete and adequate to support the validity of the NCD.

(c) Board's determination of the completeness of the NCD record, and the determination of CMS's NCD record's adequacy to support the validity of the NCD:

(1) *Board determination that the NCD record is complete and adequate to support the validity of the NCD.* If the Board determines that the NCD record is complete and adequate to support the validity of the NCD, the Board does the following:

(i) Sends a letter to the aggrieved party, the contractor, and CMS stating that the Board finds the NCD record to be complete and adequate to support the validity of the NCD.

(ii) Reviews the provision(s) of the NCD named in the complaint based on the reasonableness standard as described in § 426.531.

(2) *Board determination that the CMS's NCD record is not complete, not adequate to support the validity of the NCD, or both.* If the Board determines that CMS's NCD record is not complete, not adequate to support the validity of the NCD, or both, the Board does the following:

(i) Sends a letter to the aggrieved party and CMS stating that the NCD record is not complete, not adequate to support the validity of the NCD, or both.

(ii) Allows discovery as described in § 426.532.

(iii) Upon admission of new evidence, follows the process for review of new evidence as described in § 426.340.

(iv) Reviews the provision(s) of the NCD named in the complaint to apply the reasonableness standard as described in § 426.531.

§ 426.531 Board's review of the NCD to apply the reasonableness standard.

(a) *Required steps.* The Board must do the following to review the provision(s) named in the aggrieved party's complaint based on the reasonableness standard:

(1) Confine the NCD review to the provision(s) of the NCD raised in the aggrieved party's complaint filed with the Board, and to clinical or scientific evidence that is contained in the NCD record (or supplemental record).

(2) Close the NCD review record to the taking of evidence.

(3) Issue an administrative decision as described in § 426.547.

(b) *Optional steps.* The Board may do the following to apply the reasonableness standard to the provision(s) named in the aggrieved party's complaint:

(1) Conduct a hearing, and allow subpoenas as described in § 426.535 and the taking of evidence as described in § 426.540.

(2) At a hearing, consult with appropriate scientific or clinical experts concerning clinical or scientific evidence.

(3) Consider any previous Board administrative decision made under § 426.547 regarding the same provision(s) of the NCD under review.

(c) *Authority for the Board in NCD reviews when applying the reasonableness standard.* In applying the reasonableness standard to a provision (or provisions) of an NCD, the Board must follow the applicable provisions of the following:

(1) The Social Security Act.

(2) CMS regulations.

(3) CMS rulings.

(4) NCDs.

§ 426.532 Discovery.

(a) *General rules.* If the Board orders discovery, the Board does the following:

(1) Establishes a reasonable time frame for discovery.

(2) Ensures that a party to the NCD review who receives a discovery request has certain rights, which include, but are not limited to, the following:

(i) The right to select and use an attorney or other representative during the discovery process.

(ii) The right to submit discovery responses, objections, motions, or other pertinent materials to the Board.

(3) Ensures that a nonparty to the NCD review who receives a discovery request has the same rights in responding to a discovery request as any party.

(b) *Protective orders*—(1) *Request for a protective order.* Any party or nonparty receiving a discovery request may file a motion for a protective order before the date of production of the discovery.

(2) *The Board granting of a protective order.* The Board may grant a motion for protective order if it finds that the discovery sought—

(i) Is irrelevant;

(ii) Is unduly costly or burdensome;

(iii) Will unduly delay the proceeding;

(iv) Is privileged under Federal law; or

(v) Is proprietary data.

(c) *Types of discovery available.* A party may make a request to another party or nonparty for production of documents relating to a specific NCD.

(d) *Types of documents.* For the purpose of this section, the term documents includes relevant information, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained in this section will be interpreted to require the creation of a document.

(e) *Types of discovery not available.* Requests for admissions, depositions, written interrogatories, or any other forms of discovery, other than those permitted under paragraph (d) of this section, are not authorized.

(f) *Privileged documents*—(1) *Options for the Board.* The Board may, in appropriate circumstances, do any of the following:

(i) Order CMS to provide an index of any documents withheld on the basis of privilege and to state the basis for the privilege claim.

(ii) Conduct an in-camera review of any documents withheld on the basis of privilege.

(2) *Confidentiality.* If the Board orders the release of any document when privilege was asserted, the Board must order that all names or identifying information that is not relevant to the specific NCD must be redacted from the document.

§ 426.535 Subpoenas.

(a) *Purpose of a subpoena.* A subpoena requires the attendance of an individual at a hearing and may also require the individual (whether or not the individual is a party) to produce evidence authorized under § 426.540 at or before the hearing.

(b) *Filing a motion for a subpoena.* A party seeking a subpoena must file a written motion with the Board not less than 30 days before the date fixed for the hearing. The motion must do all of the following:

(1) Designate the witnesses.

(2) Specify any evidence to be produced.

(3) Describe the address and location with sufficient particularity to permit the witnesses to be found.

(4) State the pertinent facts that the party expects to establish by the witnesses or documents and whether the facts could be established by other evidence without the use of a subpoena.

(c) *Response to a motion for a subpoena.* Within 15 days after the written motion requesting issuance of a subpoena is served on all parties, any party may file an opposition to the motion or other response.

(d) *Extension for good cause.* The Board may modify the deadlines specified in paragraphs (b) and (c) of this section for good cause.

(e) *Motion for a subpoena granted.* If the Board grants a motion requesting issuance of a subpoena, the subpoena must do the following:

(1) Be issued in the name of the Board.

(2) Include the docket number and title of the NCD under review.

(3) Provide notice that the subpoena is issued according to sections 1872 and 205(d) and (e) of the Social Security Act.

(4) Specify the time and place at which the witness is to appear and any evidence the witness is to produce.

(f) *Delivery of the subpoena.* The party seeking the subpoena will serve it by personal delivery to the individual named, or by certified mail return receipt requested, addressed to the individual at his or her last dwelling place or principal place of business.

(g) *Motion to quash a subpoena.* The individual to whom the subpoena is directed may file with the Board a motion to quash the subpoena within 10 days after service.

(h) *Refusal to obey a subpoena.* The exclusive remedy for contumacy by, or refusal to obey a subpoena duly served upon, any person is specified in section 205(e) of the Act (42 U.S.C. 405(e)).

§ 426.540 Evidence.

(a) The Board determines the admissibility of evidence consistent with § 426.340.

(b) Except as provided in this part, the Board is not bound by the Federal Rules of Evidence. However, the Board may apply the Federal Rules of Evidence

when appropriate, for example, to exclude unreliable evidence.

(c) The Board must exclude evidence that it determines is clearly irrelevant or immaterial.

(d) Although relevant, the Board must exclude evidence if the Board determines it is privileged under Federal law.

(e) Consistent with § 426.340, the Board may permit the parties to introduce the testimony of scientific and clinical experts, rebuttal witnesses, and other relevant evidence, only if the testimony is related to evidence that was considered in the NCD. This testimony may be submitted in the form of a written report, accompanied by the curriculum vitae of the expert preparing the report.

(f) Experts submitting reports must be available for cross-examination at an evidentiary hearing upon request of the Board or a party to the proceeding, or the report will be excluded from the record.

(g) All documents and other evidence offered or taken for the record will be open to examination by all parties, unless otherwise ordered by the Board for good cause shown.

§ 426.541 Closing discovery.

Upon completion of discovery, the Board will notify all parties in writing that the discovery period is closed.

§ 426.544 Dismissals for cause.

(a) The Board may, at the request of any party, or on its own motion, dismiss a complaint if the aggrieved party (or his or her representative) fails to do either of the following:

(1) Attend or participate in a prehearing conference or hearing without good cause.

(2) Comply with a lawful order of the Board.

(b) The Board must dismiss any provision(s) of a complaint in any of the following circumstances:

(1) The Board does not have the authority to rule on that provision under § 426.505(d).

(2) The complaint is not timely. (See § 426.500.)

(3) The complaint is not filed by an aggrieved party, or is filed by an individual who is unable to demonstrate that he or she is in need of a particular service. (See § 426.500.)

(4) The aggrieved party no longer needs the service because the aggrieved party has received the service before the aggrieved party filed the complaint with the Board, except for an individual who has a continuing need for a particular item or service that is subject to an NCD.

(5) The complaint challenges a provision or provisions of an LCD except as provided in § 426.476. (See § 426.505.)

(6) CMS notifies the Board that the NCD is no longer in effect. (See § 426.520.)

(7) The aggrieved party withdraws the complaint. (See § 426.523.)

(8) The aggrieved party is deceased.

(9) Nothing in the preceding list of circumstances leading to automatic dismissal shall be construed as having any force and effect concerning the legal rights of representatives of a deceased beneficiary to properly pursue settlement of a claim.

(c) The Board may, at the request of any party, or on his or her own motion, dismiss a complaint if the Board has already issued an administrative decision on the NCD or provisions of an NCD and the aggrieved party has not presented any new clinical or scientific evidence that supports the complaint.

§ 426.545 Witness fees.

(a) A witness testifying at a hearing before the Board receives the same fees and mileage as witnesses in Federal district courts of the United States. If the witness is an expert, he or she will be entitled to an expert witness fee. Witness fees will be paid by the party seeking to present the witness.

(b) If the Board requests expert testimony, the Board is responsible for paying all applicable fees and mileage.

§ 426.546 Record of hearing.

The Board must ensure that all hearings are open to the public and must be mechanically or stenographically reported. All evidence upon which the Board relies for decision must be contained in the transcript of testimony, either directly or by appropriate reference. All medical reports, exhibits, and any other pertinent document or record, either in whole or in material part, introduced as evidence, must be marked for identification and incorporated into the record.

§ 426.547 Issuance, notification, and posting of a Board's administrative decision.

The Board must do all of the following:

(a) Issue to all parties to the NCD review, within 90 days of closing the NCD review record to the taking of evidence, one of the following:

(1) A written administrative decision, including a description of appeal rights.

(2) A written notification stating that an administrative decision is pending, and an approximate date of issuance for the administrative decision.

(b) Make the administrative decision available on the Internet located at the Medicare Internet site of the Department of Health and Human Services. The posted decision will not include any information that would identify any individual, provider of service, or supplier.

§ 426.550 Mandatory provisions of the Board's administrative decision.

(a) *Finding.* The Board's administrative decision must include one of the following:

(1) A determination that the provision of the NCD is valid under the reasonableness standard.

(2) A determination that the provision of the NCD is not valid under the reasonableness standard.

(3) A statement dismissing the complaint regarding the NCD, and a rationale for the dismissal.

(b) *Other information.* The Board's administrative decision must include all of the following:

(1) The date of issuance.

(2) The docket number of the NCD review.

(3) The names of the parties to the NCD review.

(4) A statement as to whether the aggrieved party has filed a claim for the service(s) named in the complaint, the date(s)-of-service, and the disposition, if known.

(5) A rationale for the basis of the Board's administrative decision, including the following:

(i) Findings of fact.

(ii) Interpretations of law.

(iii) Applications of fact to law.

(6) A summary of the evidence reviewed.

(7) A statement regarding the right to judicial review.

(8) The signature of a Board member.

§ 426.555 Prohibited provisions of the Board's administrative decision.

The Board's administrative decision must not do any of the following:

(a) Order CMS to modify (including adding to or deleting from) a provision or provisions of an NCD.

(b) Order CMS to pay a specific claim.

(c) Establish a time limit for the establishment of a new or revised NCD.

(d) Review, evaluate, or address an NCD other than the NCD under review.

(e) Include a requirement for CMS that specifies payment, coding, or systems changes for an NCD, or deadlines for implementing these types of changes.

(f) Order or address how CMS implements an NCD.

§ 426.560 Effect of the Board's administrative decision.

(a) *Valid under the reasonableness standard.* If the Board finds that the

provision (or provisions) of an NCD named in the complaint is (are) valid under the reasonableness standard, the aggrieved party may challenge the final agency action in Federal court.

(b) *Not valid under the reasonableness standard.* If the Board finds that the provision (or provisions) of an NCD named in the complaint is (are) invalid under the reasonableness standard, then CMS will instruct its contractor, M+C plan, or other Medicare managed care plan to provide the following relief.

(1) *Individual claim relief when a claim is pending or has been previously adjudicated.* If an aggrieved party's claim/appeal(s) had previously been denied, the contractor, an M+C plan, or another Medicare managed care plan must reopen the aggrieved party's claim and adjudicate the claim without using the provision(s) of the NCD that the Board found invalid.

(2) *Individual claim relief when no claim is pending.* If a revised NCD is issued, contractors, M+C plans, and other Medicare managed care plans must use the revised NCD in reviewing claim/appeal submissions or request for service for items delivered or services performed on or after the effective date.

(3) *Coverage determination relief.* Within 30 days of the issuance of the Board's administrative decision, CMS must send a letter to the Board and the aggrieved party or parties named in the complaint announcing the intent to do one of the following:

(i) Repeal the NCD in its entirety, or repeal the provision or provisions of the NCD that the Board's administrative decision stated was (were) not valid under the reasonableness standard.

(ii) Conduct a reconsideration using the information collected during the NCD review, as well as any other applicable information, and do one of the following:

(A) Supplement the NCD record or rationale, and issue a new NCD.

(B) Revise the NCD.

(C) Repeal the NCD.

(iii) Unless repealed under paragraph (b)(3)(i) or (b)(3)(ii)(C) of this section, the contractor may continue to use the NCD in adjudicating claims for individuals who did not challenge the NCD while a reconsideration is pending.

§ 426.562 Notice of the Board's administrative decision.

After the Board has made a decision regarding an NCD complaint, the Board sends a written notice of the administrative decision to each party. The notice must—

(a) Contain a finding with respect to the NCD complaint; and

(b) Inform each party to the determination of his or her rights to seek further review if he or she is dissatisfied with the determination, and the time limit under which an appeal must be requested.

§ 426.565 Board's role in making an LCD or NCD review record available.

Upon a request from a Federal Court, the Board must provide to the Federal Court, a copy of the Board's LCD or NCD review record (as described in § 426.567).

§ 426.567 Board's NCD review record.

(a) *Elements of the Board's NCD review record.* Except as provided in paragraph (b) of this section, the Board's NCD review record consists of any document or material that the Board compiled or considered during an NCD review, including, but not limited to, the following:

(1) The NCD complaint.

(2) The NCD and NCD record.

(3) The supplemental NCD record, if applicable.

(4) The Board's administrative decision.

(5) Transcripts of record.

(6) Any other relevant evidence gathered under § 426.540.

(b) *Documents excluded from the contractor/CMS' NCD record.* The NCD record does not include material that is privileged or otherwise prohibited from release by Federal law.

§ 426.570 Board administrative decision.

A decision by the Board constitutes a final agency action and is subject to judicial review. CMS may not appeal a Board administrative decision.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 26, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 16, 2002.

Tommy G. Thompson,

Secretary.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 22, 2002

ENVIRONMENTAL PROTECTION AGENCY

Air quality planning purposes; designation of areas:
- California; published 7-23-02

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Iprovalicarb; published 8-22-02

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Federal Aviation Administration

Airworthiness directives:
- Bell; published 8-7-02
- McDonnell Douglas; published 8-7-02

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Egg, poultry, and rabbit products; inspection and grading:
- Fees and charges increase; comments due by 8-26-02; published 7-26-02 [FR 02-18922]

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Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products;
- Bovine spongiform encephalopathy; disease status change—
  - Poland; comments due by 8-30-02; published 7-1-02 [FR 02-16422]

Exportation and importation of animals and animal products:
- Standards for permanent, privately owned horse quarantine facilities; comments due by 8-30-02; published 7-1-02 [FR 02-16337]

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Crop insurance regulations:
- Small grains and rapeseed crop insurance provisions; comments due by 8-27-02; published 6-28-02 [FR 02-16482]

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National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Findings on petitions, etc.—
  - Pacific salmon and steelhead; 16 evolutionarily significant units; comments due by 8-26-02; published 7-25-02 [FR 02-18861]

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Electronic reporting requirements; comments due by 8-26-02; published 7-25-02 [FR 02-18862]

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Fishery conservation and management:
- Atlantic highly migratory species—
  - Commercial shark management measures; comments due by 8-27-02; published 5-29-02 [FR 02-13407]

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Fishery conservation and management:
- Magnuson-Stevens Act provisions—
  - Domestic fisheries; exempted fishing permit applications; comments due by 8-29-02; published 8-14-02 [FR 02-20652]
  - Domestic fisheries; exempted fishing permit applications; comments due by 8-29-02; published 8-14-02 [FR 02-20657]
- West Coast States and Western Pacific fisheries—
  - West Coast salmon; comments due by 8-29-02; published 8-14-02 [FR 02-20653]
  - West Coast salmon; comments due by 8-29-02; published 8-14-02 [FR 02-20661]
  - West Coast salmon; comments due by 8-29-02; published 8-14-02 [FR 02-20656]

Marine mammals:
- Taking and importation—
  - Eastern North Pacific Southern Resident killer whales; comments due by 8-30-02; published 7-1-02 [FR 02-16528]

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Federal Acquisition Regulation (FAR):
- Individuals with disabilities; Section 508 contract clauses; comments due by 8-26-02; published 6-27-02 [FR 02-15976]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Minnesota; comments due by 8-26-02; published 7-26-02 [FR 02-18865]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Minnesota; comments due by 8-26-02; published 7-26-02 [FR 02-18866]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Louisiana; comments due by 8-30-02; published 7-31-02 [FR 02-19320]

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- Satellite communications—
  - Multichannel video distribution and data service in 12 GHz band; technical, service, and licensing rules; comments due by 8-26-02; published 6-26-02 [FR 02-15779]

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- West Virginia; comments due by 8-26-02; published 7-12-02 [FR 02-17486]

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- Electioneering communications; comments due by 8-29-02; published 8-7-02 [FR 02-19996]

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Federal Acquisition Regulation (FAR):
- Individuals with disabilities; Section 508 contract clauses; comments due by 8-26-02; published 6-27-02 [FR 02-15976]

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- Physician fee schedule; practice expense survey data criteria for submssion; comments due by 8-27-02; published 6-28-02 [FR 02-16332]

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Centers for Medicare & Medicaid Services

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- Critical habitat designation—
  - Abutilon eremitopetalum etc. (32 plant species from Lanai, HI); comments due by 8-30-02; published 7-15-02 [FR 02-17745]

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- Injurious wildlife—
  - Snakeheads (family Channidae); comments due by 8-26-02; published 7-26-02 [FR 02-19016]

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02; published 8-16-02 [FR 02-20713]

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TRANSPORTATION DEPARTMENT

Coast Guard

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TRANSPORTATION DEPARTMENT

Federal Aviation Administration

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TRANSPORTATION DEPARTMENT

Federal Aviation Administration

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TRANSPORTATION DEPARTMENT

Federal Aviation Administration

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TRANSPORTATION DEPARTMENT

Federal Aviation Administration

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TRANSPORTATION DEPARTMENT

Federal Aviation Administration

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 3009/P.L. 107–210

Trade Act of 2002 (Aug. 6, 2002; 116 Stat. 933)

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